

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 SECURITIES AND EXCHANGE COMMISSION,
4 Plaintiff,
5 vs. NO: 12-0257 JB/GBW
6 LARRY A. GOLDSTONE, et al.,
7 Defendants.

8
9 VOLUME 8

10 Transcript of Trial Proceeding before The
11 Honorable James O. Browning, United States District
12 Judge, Albuquerque, Bernalillo County, New Mexico,
13 commencing on June 15, 2016.

14 For the Plaintiff: Mr. Steve McKenna; Mr. Greg
15 Kasper; Ms. Danielle Voorhees; Mr. Dugan Bliss

16 For the Defendants: Mr. Randall Lee; Ms. Heather
17 Tewksbury; Mr. Robert Badal;

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I N D E X

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EXHIBITS ADMITTED

Defendants' Exhibit QE Admitted 2232

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1 THE COURT: All right. Is there anything
2 we need to discuss before we bring the jury in, Mr.
3 McKenna?

4 MR. McKENNA: No, thank you, Your Honor. I
5 was just going to mention we're going to file some
6 more jury instructions this morning.

7 MS. VOORHEES: Just edits.

8 THE COURT: I got your three yesterday. I
9 haven't had a chance to study them yet. I'll try to
10 take a look at those later this morning.

11 MR. McKENNA: Thank you.

12 THE COURT: Mr. Lee?

13 MR. LEE: No. We also intend to file some,
14 a few proposed additional jury instructions tonight,
15 and either tonight or tomorrow or shortly, some
16 thoughts on the Court's existing proposals.

17 THE COURT: Well, I'm still proofing them.
18 My legal assistant did a pretty good job of typing
19 them up, but I'm still proofing them.

20 (The jury entered the courtroom.)

21 THE COURT: All right. Everyone be seated.
22 I guess we were just too rough on Ms. Wild;
23 right? As she's probably told everybody. I told the
24 lawyers and parties here, she got out of her car
25 yesterday and stepped on her ankle wrong, and she

1 began to come in from that break we had about 4:45
2 yesterday, I noticed that she was limping badly, and
3 I had to drive her to her car yesterday. It was
4 beginning to swell. And she stopped at urgent care
5 on the way home. I guess it was so swollen, it began
6 to swell so much that they can't even tell whether
7 it's fractured or just a bad strain at the present
8 time.

9 I've known Ms. Wild since she was 18 -- or
10 I'll say 13, that would be better -- and she's always
11 moved pretty fast, so we finally figured out a way to
12 slow her down.

13 Well, good morning. Thank you for being
14 back on time, ready to go. We really appreciate all
15 you're doing for us, and look forward to a good day's
16 worth of work here.

17 All right, Ms. Reinhart, I'll remind you
18 that you're still under oath.

19 Mr. Lee, if you wish to continue your
20 cross-examination of Ms. Reinhart, you may do so at
21 this time.

22 MR. LEE: Thank you, Your Honor.

23 THE COURT: Mr. Lee.

1 CYNTHIA REINHART,
2 after having been previously duly sworn under
3 oath, was questioned, and continued testifying
4 as follows:

5 CONTINUED CROSS-EXAMINATION

6 BY MR. LEE:

7 Q. Good morning, Ms. Reinhart.

8 A. Good morning, Mr. Lee.

9 Q. So yesterday when we left off, we were
10 talking about how the SEC kept asking you to
11 speculate about the meaning of emails that you were
12 not either sender or recipient on. Do you remember
13 that?

14 A. I think I wouldn't call it speculating, but
15 reading the emails, and then interpreting them as I
16 would understand them.

17 Q. Without the benefit of actually hearing
18 from the authors of the email; right?

19 A. That's correct.

20 Q. So interpreting it based on your own
21 perspective without having any idea whatsoever as to
22 what the author actually intended; correct?

23 A. Based on my experience and just reading the
24 email, I was able to interpret those emails to the
25 best of my ability.

1 Q. And we were specifically talking about a
2 couple of emails sent by Deborah Burns. Do you
3 recall that?

4 A. Yes.

5 Q. And the SEC had asked you on a couple of
6 occasions, I believe twice, what you thought
7 Ms. Burns meant; right?

8 A. Yes.

9 Q. And you responded to those questions
10 without ever having talked to her; right?

11 A. Yes.

12 Q. And you responded to the SEC's questions
13 without ever having asked for the opportunity to hear
14 what she had to say; right?

15 A. Yes.

16 Q. And you at one point said, when I asked
17 you, "Well, why didn't you just ask to try to talk to
18 her?" you said, well, you thought it would be
19 inappropriate for you to contact her. Do you recall
20 that?

21 A. Yes, I do.

22 Q. But you also could have asked the SEC what
23 she had told them; right?

24 A. I suppose if I thought about that, yes.

25 Q. Right. If you thought about it, you could

1 have. And the SEC had interviewed her, so you could
2 have asked the SEC -- you could have told the SEC,
3 when you met with them, you could have said, "You
4 know, before I go opining on someone else's email,
5 I'd actually like to hear what that person has to
6 say." You could have done that. Right?

7 A. I suppose. I didn't know if that would be
8 proper, but if you're suggesting it would be proper,
9 I suppose I could have.

10 Q. Well, you didn't even ask the question, did
11 you?

12 A. No, I did not.

13 Q. And how many times have you met with the
14 SEC in total, not including your deposition or the
15 testimony they took while the investigation was
16 pending?

17 A. Three or four times, perhaps. Three times.

18 Q. And when was the last time you met with
19 them?

20 A. Earlier this week.

21 Q. And how about before that, when did you
22 last meet with them?

23 A. Several weeks ago.

24 Q. And how long did each of those meetings
25 last, approximately?

1 A. A couple of hours, perhaps.

2 Q. So you had had ample opportunity in the
3 last few weeks to try to get a better understanding
4 of what people, the authors of various emails, might
5 say; right?

6 A. Yes. If I thought it was necessary I would
7 have asked. But I didn't.

8 Q. And that's because you just wanted to adopt
9 whatever the SEC was leading you to say; right?

10 A. No, I thought that I could appreciate what
11 the emails essentially were conveying, again based on
12 my reading of them and my experience with the
13 company.

14 Q. And Ms. Burns testified at trial recently;
15 right? You were aware of that?

16 A. I'm not aware if she had testified or not.

17 Q. But did you even ask the SEC if she had
18 already testified by the time you took the stand?

19 A. I did not.

20 Q. You didn't ask for the opportunity to see
21 what she had testified to about the emails that the
22 SEC was asking you to speculate on?

23 A. No, I did not.

24 MR. KASPER: Objection, Your Honor. Could
25 we approach?

1 THE COURT: You may.

2 (The following proceedings were held at the
3 bench.)

4 MR. KASPER: Both parties have invoked the
5 rule. It would have been completely improper if the
6 witness had sought to review Ms. Burns' testimony.
7 And Counsel's suggestion that she should have is
8 completely improper.

9 THE COURT: Well, it does seem a little
10 odd. Are you going to continue this?

11 MR. LEE: I'm done with that questioning.

12 THE COURT: Well, let's move on then.

13 MR. LEE: Okay.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: All right, Mr. Lee.

17 Q. (By Mr. Lee) Now, yesterday we looked at
18 Exhibit 64, which was one of the emails the SEC asked
19 you to comment on. Let's look at -- take a quick
20 look at that. Do you recall this one? That must not
21 be the right one. The second one I want to look at
22 is Exhibit 90. Do you recognize this email?

23 A. Yes, I do.

24 Q. This was the second of the emails that
25 counsel for the SEC asked you to comment on. Do you

1 recall that?

2 A. I don't remember if it was the second or
3 first, but I did look at it and I did comment on it.

4 Q. Right. And they pointed you to the
5 sentence that says, "If KPMG or anyone else asks
6 about the postponement of this deal, you should refer
7 them to me." Right? They asked you about that
8 sentence?

9 A. Yes.

10 Q. The next sentence, however, reads, "Here is
11 the language that McKee and I came up with to give to
12 the RMBS investor that asked for an explanation in
13 writing." Do you see that?

14 A. Yes, I do.

15 Q. And we established yesterday that you know
16 that McKee is short for McKee Nelson, which was a law
17 firm representing Thornburg in its securitizations;
18 right?

19 A. Yes.

20 Q. And you know that McKee is a
21 well-recognized, reputable firm based in New York
22 that specializes in that kind of work; right?

23 A. If you say so.

24 Q. Well, you had heard of McKee Nelson, I
25 assume, right?

1 A. Yes.

2 MR. KASPER: Objection, Your Honor. Could
3 we approach again?

4 THE COURT: You may.

5 (The following proceedings were held at the
6 bench.)

7 THE COURT: I thought McKee Nelson was out
8 of Washington.

9 MR. KASPER: That wasn't my objection.

10 THE COURT: I think it is.

11 MR. KASPER: Your Honor, during the
12 pretrial in this case, we exchanged interrogatories
13 with the defendants. We specifically asked them if
14 they were going to make a reliance-of-counsel
15 defense, and they specifically told us they were not.
16 And they are going to great lengths in this trial to
17 do exactly what they told us they were not, and they
18 should be obliged to --

19 THE COURT: I noticed in your jury
20 instructions you submitted a reliance-on-counsel
21 instruction. So is this unanticipated?

22 MR. KASPER: I guess that's probably -- to
23 be honest, I haven't been focused on the jury
24 instructions.

25 THE COURT: I think it was yours.

1 MR. McKENNA: But that was more for the
2 auditors as opposed to counsel, was what that
3 instruction pointed to.

4 THE COURT: So you're saying the
5 interrogatory says that they were not going to rely
6 upon lawyers?

7 MR. KASPER: Right. We specifically asked,
8 "Do you intend to rely on the advice of legal counsel
9 in any manner as a defense to any claim in the
10 complaint?"

11 And they say some objections and they say,
12 "Defendants do not intend to assert advice of counsel
13 as a formal defense to any claim in the complaint."

14 THE COURT: Does this go to something else?

15 MR. LEE: It does, Your Honor. This is not
16 a reliance on counsel.

17 THE COURT: And you're not intending to
18 raise a reliance-on-counsel defense?

19 MR. LEE: We are not. The point is that,
20 you know, she's essentially alleging this big
21 cover-up and the SEC, the necessary implications of
22 all of this -- many of SEC's questions is that there
23 is a cover-up by other people beyond Mr. Goldstone
24 and Mr. Simmons. I asked this question yesterday. I
25 was planning to ask it again, essentially, that are

1 you suggesting that McKee Nelson somehow engaged in
2 improper behavior, as well as --

3 THE COURT: The SEC is alleging what --
4 that there is a cover-up beyond -- I haven't heard
5 that.

6 MR. KASPER: You haven't heard it because
7 we haven't made it.

8 THE COURT: You know, I guess you could ask
9 the question, but it seems to me it's a phantom
10 issue.

11 MR. LEE: I think it will become clear as I
12 go through my cross on some other documents, the
13 necessary implications of the SEC's arguments that
14 such and such a piece of information or such-and-such
15 a document --

16 THE COURT: Seems like you're fighting an
17 issue that's not here.

18 MR. LEE: Oh, I respectfully disagree. I
19 think it is.

20 THE COURT: I've never heard it in the case
21 before that they think there is anything beyond
22 Goldstone and Simmons and Starrett. So I guess to
23 start dragging in law firms, you're doing it, not
24 them.

25 MR. LEE: The point, Your Honor, is that

1 they have shown her -- and her as well as other
2 witnesses -- a number of documents and asked the
3 question or series of questions about whether this
4 should have been disclosed, whether you would have
5 wanted this to have been disclosed. And the point is
6 that on many of those documents there are other
7 people -- there are other people either copied on the
8 document or there are other people referenced in the
9 document such as within a particular document. And
10 the necessary implication is that all of those other
11 people who were also participants in the discussion,
12 the email chain and so on.

13 THE COURT: I don't see that as being a
14 necessary implication. I think you're dragging in
15 issues and you're creating phantom issues, and then
16 trying to defend against them. So I don't see it.

17 MR. KASPER: Even if we were dragging in
18 somebody else, whether that person is a lawyer or
19 not, or how esteemed a lawyer, or in New York or
20 Washington, D.C., certainly has no place in the case
21 other than to suggest that they were relying upon
22 legal advice and that their conduct was appropriate
23 because the lawyers told them that was appropriate,
24 and that's explicitly what the defendants said they
25 would not do.

1 MR. LEE: Your Honor, Ms. Burns herself
2 testified that she worked, in the case of this
3 particular email --

4 THE COURT: I'm not going to preclude the
5 question. I'm going to take your word that you're
6 not going to rely upon advice of counsel for a
7 defense. But I think you better be careful. You've
8 got enough things to defend against. Dragging in
9 more doesn't seem to be helpful to you. I mean, I
10 just don't agree with you that it's a necessary
11 implication. Till this moment, I never thought that
12 the SEC was intending that McKee Nelson or anybody
13 else was part of the wrongdoing here. So if you want
14 to make them part of it, I guess I can think about
15 the strategic implications of that, but I just don't
16 agree that it's a necessary implication of what the
17 SEC's charges are.

18 MR. LEE: Well, I guess to put it
19 differently, I mean, it is a sort of a strategic
20 approach by us, but to put it differently, I think it
21 tends to rebut the implication that our clients did
22 anything purposeful or intentional or nefarious, if
23 it is open, and, you know, if the various emails that
24 were supposedly concealed were open and publicized or
25 published to a number of different people. And that

1 will, I think, become clear in a couple of lines of
2 cross.

3 THE COURT: I think that's the reason I'm
4 going to allow the question, but I don't agree with
5 the other argument.

6 MR. LEE: Okay.

7 MR. KASPER: Thank you, Your Honor.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: Mr. Lee.

11 Q. (By Mr. Lee) So Ms. Burns, in reference to
12 the sentence that is highlighted there, "Here is the
13 language that McKee and I came up with," you're not
14 suggesting that McKee somehow itself, that law firm,
15 did anything improper, are you?

16 A. Ms. Burns?

17 Q. No, with reference to the language in the
18 email sent by Ms. Burns --

19 A. Okay.

20 Q. -- which says, "Here is the language that
21 McKee and I came up with to give to the RMBS
22 investor," you're not suggesting that the law firm
23 McKee did anything improper, are you?

24 A. No, I'm not.

25 Q. Now, yesterday Mr. Kasper asked you some

1 questions about the fact that the Citi margin call
2 had been discussed in executive session without KPMG
3 present. Do you recall that?

4 A. Yes, I do.

5 Q. And the implication was that somehow the
6 fact that KPMG hadn't been present in the executive
7 session was suspicious or nefarious, wasn't it?

8 A. I don't know what the implication -- you
9 know, if that's the implication you want me to
10 believe. It was just -- in my opinion, it wasn't
11 very informative to us, as the external auditors, to
12 not be present during that conversation.

13 Q. And you understand that executive sessions
14 in an audit committee meeting -- and that is to say a
15 meeting between just members of the audit committee
16 and members of management without the auditor
17 present -- are common; correct?

18 A. They're probably less common, I would say.
19 There are times when the auditors aren't present.
20 Typically it might be to discuss the performance of
21 the audit team. That's a typical way. But in most
22 cases the auditors are at the -- that's my
23 experience. I've always been at the audit committee
24 meetings.

25 Q. And isn't it the case, in the case of

1 Thornburg, at nearly every audit committee meeting
2 there was a portion of the meeting where management
3 and the auditors -- management and the audit
4 committee members met without KPMG present?

5 A. I don't recall.

6 Q. And there were also times at nearly every
7 audit committee meeting where members of the audit
8 committee and KPMG met without management present;
9 correct?

10 A. There weren't very many of those. No,
11 there were not.

12 Q. It didn't happen at most audit committee
13 meetings that management was excused from a portion
14 of the meeting so that KPMG could meet with members
15 of the audit committee?

16 A. There were a few of those, but not many.

17 Q. And you understand that that is generally a
18 common practice among audit committees; right?

19 A. It is. At least on an annual basis, the
20 auditors will meet separate and apart from management
21 at least on an annual basis to conduct their
22 inquiries to make sure there isn't anything they
23 should be made aware of.

24 Q. And there weren't any occasions where KPMG
25 requested the opportunity to meet with the audit

1 committee in executive session without management
2 present and that request was declined, were there?

3 A. Not that I can recall, no.

4 Q. So in your experience, anytime KPMG wanted
5 to meet with members of the audit committee without
6 management present, it could; correct?

7 A. Yes.

8 Q. And if we can pull up Exhibit 81, the board
9 minutes. So Exhibit 81 is the minutes of the
10 February 22 audit committee meeting; right?

11 A. Yes.

12 Q. And let's go down to the second page toward
13 the bottom, the section that says, "Review and
14 approval of annual report on Form 10-K." And you
15 recall that the SEC counsel asked you a number of
16 questions about this particular paragraph; right?

17 A. Yes.

18 Q. And you testified about the discussion that
19 occurred with the audit committee about the filing of
20 the Form 10-K. Do you recall that?

21 A. Yes.

22 Q. And you testified about the fact that the
23 10-K was being finalized, and eventually the audit
24 committee voted to approve the 10-K; right?

25 A. Yes.

1 Q. And you were asked, "So you discussed
2 whether or not the 10-K could be filed, but nobody
3 mentioned that there was an outstanding margin call
4 from Citi." Do you recall that?

5 A. Yes.

6 Q. And you responded, "That's correct"; right?

7 A. Yes.

8 Q. And you were trying to suggest that somehow
9 the information about the Citi call which had been
10 discussed in executive session had somehow been
11 concealed from KPMG; correct?

12 A. We were not aware of it, yes.

13 Q. And you were trying to suggest that that
14 was somehow improper; correct?

15 A. Yes. Being not aware of a significant
16 transaction is something that we should be apprised
17 of.

18 Q. Now, the minutes make clear that by the
19 time this discussion occurred, about the review and
20 approval of the Form 10-K, the board members already
21 knew that the Citi call -- they knew that the Citi
22 call had been received and that it was being paid
23 over time. Do you recall that?

24 A. I don't know what the board members knew.
25 I only know what I know.

1 Q. Okay. Well, let's try to make that clear,
2 because I think the timing is actually important
3 here. So let's go back to the first page at the very
4 beginning. Do you see at the very top, the
5 introductory paragraph says that the meeting began at
6 3:00 Mountain time. Do you see that?

7 A. Yes.

8 Q. And then go back to the next page, and
9 let's go to the executive session portion, and then
10 it describes that the committee met in executive
11 session and it describes the participants and gives a
12 short summary of the discussion, and then it says,
13 "The executive session was adjourned and the regular
14 meeting convened at 4:00"; correct?

15 A. Yes.

16 Q. And then the minutes go on to describe what
17 happened in the regular meeting; right?

18 A. Yes.

19 Q. And so the executive session occurred from
20 3:00 to 4:00, without KPMG present, and then at 4:00
21 KPMG joined the meeting; correct?

22 A. Yes.

23 Q. So let me ask again. The minutes, if you
24 look at the time of the various portions of the
25 meeting as reflected in the audit committee meeting

1 minutes, makes clear that by the time the discussion
2 of the approval of the Form 10-K occurred, the board
3 members who were present already knew about the Citi
4 call and they already knew that the Citi call was
5 being paid over time. Would you agree with me?

6 A. Yes.

7 Q. Now, let's go down to the list of
8 attendees. I think you have to blow up the
9 introductory paragraph, as well. So you know that
10 Fran Mullin was the chairman of the audit committee;
11 right?

12 A. Yes.

13 Q. And so Fran Mullin already knew about the
14 Citi call; correct?

15 A. Prior to the meeting?

16 Q. No. By the time KPMG joined the meeting
17 and by the time of the discussion of the Form 10-K,
18 Fran Mullin was aware of the Citi call; correct?

19 A. It appears so, yes.

20 Q. And by the time of the discussion of the
21 Form 10-K when KPMG joined the meeting, Anne-Drue
22 Anderson was aware of the Citi call; correct?

23 A. Yes.

24 Q. And by the time of the discussion of the
25 Form 10-K when KPMG was present, David Ater knew

1 about the Citi call; correct?

2 A. Yes.

3 Q. And by the time of the discussion of the
4 Form 10-K with KPMG, Stuart Sherman also knew about
5 the Citi call; correct?

6 A. Yes.

7 Q. And certain other members of the board of
8 directors who were not members of the audit committee
9 but were board members also attended this meeting.
10 Do you see that?

11 A. Yes.

12 Q. And so by the time of the discussion of the
13 Form 10-K portion of the audit committee meeting,
14 where KPMG was present, Michael Jeffers, another
15 director, knew about the Citi call; correct?

16 A. Yes.

17 Q. And by the time of the meeting discussing
18 the Form 10-K where KPMG was present, Ike Kalangis,
19 another director, knew about the Citi call; correct?

20 A. Yes.

21 Q. And by the time of the portion of the
22 meeting in which the Form 10-K was discussed with
23 KPMG, Garrett Thornburg, the chairman of the board,
24 was aware of the Citi call; correct?

25 A. Yes.

1 Q. And none of these individuals, none of
2 these board members and audit committee members
3 discussed the Citi call with KPMG in the portion of
4 the meeting that you have suggested was somehow
5 improper, did they?

6 A. They did not discuss the Citi call with me
7 in the board meeting, no.

8 Q. And you're not actually meaning to suggest
9 that any of those members of the audit committee and
10 board, Fran Mullin, Anne-Drue Anderson, David Ater,
11 Stuart Sherman, Garrett Thornburg, Michael Jeffers,
12 and Ike Kalangis, all of whom knew about the Citi
13 call and all of whom didn't say anything about the
14 Citi call during the discussion of the Form 10-K --
15 you're not actually suggesting that all of them were
16 somehow involved in a cover-up?

17 A. I'm not suggesting that, no.

18 Q. Now, on March 18, you did learn about the
19 fact that the Citi call had been discussed in
20 executive session; correct?

21 A. Yes.

22 Q. And if we can go to Exhibit IB, these are
23 minutes of the meeting of the audit committee. Do
24 you see that?

25 A. Yes.

1 Q. And if we can go to the section entitled
2 "KPMG overall conclusions." Now, this is the portion
3 of the meeting minutes that we've generally been
4 focused on, but let's go to the next page. Notice,
5 this is the second page of the audit committee
6 meeting minutes which I don't believe counsel for the
7 SEC showed you when asking you about what happened on
8 February 22. This says, "The audit committee
9 provided KPMG with a summary of the meeting held with
10 company management on Friday, February 22,
11 immediately prior to the regularly scheduled audit
12 committee meeting. The meeting with the company
13 focused on the status of a large margin call,
14 especially a large margin call that had been received
15 from CitiCorp tied to its Alt-A collateral which
16 occurred following the further February 14
17 deterioration of that segment of the MBS market, the
18 company's liquidity position, and the willingness of
19 CitiCorp to allow the company to meet the call over
20 time without default, and the steps that were being
21 taken to meet the margin calls before the filing of
22 the Form 10-K." Do you see that?

23 A. I do.

24 Q. And you became aware of that during the
25 March 18 meeting; correct?

1 A. Yes.

2 Q. And even after learning that the executive
3 session on February 22 had occurred, that did not
4 change your opinion that there were no concerns about
5 management's integrity, did it?

6 A. At that time, no.

7 Q. And when you testified yesterday in
8 response to the SEC's questions leaving the
9 impression that somehow the executive session on
10 February 22 had been improper, you didn't point out
11 to the jury that, in fact, you later learned about it
12 and it still didn't change your conclusion on
13 management's integrity. You didn't point that out,
14 did you?

15 A. I wasn't asked about it, so I didn't point
16 it out.

17 Q. Right. The SEC didn't try to elicit the
18 full picture from you, did they?

19 A. I just wasn't asked that question. I don't
20 know about the full picture.

21 Q. And when you testified about the February
22 22nd executive session and then the full discussion
23 on February 22 that included KPMG, and somehow
24 suggested that the fact that the Citi call hadn't
25 been discussed in the session with KPMG, you didn't

1 mention the fact that it was six or eight other
2 members of the board had also participated in the
3 executive session and had also not said anything
4 about the Citi call, did you?

5 A. No, I did not.

6 Q. You tried to leave the impression, or at
7 least in the questions that were asked of you, you
8 tried to leave the impression that that was a
9 decision made by Mr. Goldstone and Mr. Simmons,
10 didn't you?

11 A. No. I just simply answered the question
12 that was posed to me about the meeting that I
13 attended, the portion of the meeting that I was
14 present for.

15 Q. But you could have pointed out that there
16 were six or eight other members of the board of
17 directors who also participated in both the executive
18 session and the portion with KPMG. You could have
19 pointed that out; right?

20 A. If I was asked that, I would have answered
21 the question to the best of my ability.

22 Q. So you didn't -- your response is, you're
23 just answering the questions asked; you don't feel
24 like it's necessary to provide any context?

25 A. I'd be happy to provide the context. But

1 I'm trying to just be focused on your questions and
2 do that to the best of my ability, answer them to the
3 best of my ability.

4 Q. On the SEC's questions, that is. So it's
5 the SEC that's not actually asking you to provide
6 context, isn't it?

7 A. Any question that I'm asked, Mr. Lee,
8 whether it's from you or the SEC, I'll try to be very
9 responsive to those questions.

10 Q. Now, you were shown a number of updates by
11 Mr. Goldstone to members of the board. Do you recall
12 that?

13 A. A number of updates?

14 Q. A number of emails that Mr. Goldstone
15 referred to generally in the case as board updates,
16 but a number of emails that Mr. Goldstone sent to
17 members of the board during the latter half of
18 February; right?

19 A. Yes.

20 Q. And they were generally updates on various
21 developments and events in the business; right? Just
22 generally speaking?

23 A. Yes.

24 Q. And you were asked if you would have wanted
25 to see those; right?

1 A. I wanted to see them or be told about the
2 events that were occurring in that time period, yes.

3 Q. Well, I think you were specifically asked
4 if you would have wanted to see the emails
5 themselves. Do you recall that?

6 A. Yes, I do.

7 Q. Now, it's common for a CEO to communicate
8 with board members by email; right?

9 A. I would presume so, yes.

10 Q. And you don't, as a general course, ask to
11 review emails between members of management and the
12 board, do you, as part of your audit procedures?

13 A. Typically not, no.

14 Q. And you typically don't ask to be copied
15 every time a member of management sent an email to a
16 member of the board of directors, do you?

17 A. No, we do not.

18 Q. And indeed, by doing, at that time, I think
19 you testified an average of 10 to 12 audits a year,
20 it would be virtually impossible for you to review
21 every email sent by a member of management to a
22 member of the board for all the clients that you're
23 auditing; correct?

24 A. That's correct.

25 Q. And one of the emails you were shown was a

1 board update dated February 25. And if we can pull
2 that up, please, it's Exhibit 95. And this was one
3 of the emails that you testified you would have
4 wanted to know about; correct?

5 A. Yes.

6 Q. And you said it would have been important
7 to you to know or to have seen. Do you recall that?

8 A. To either have seen it or been told about
9 what was happening with respect to the company's
10 liquidity situation at that time.

11 Q. And during the restatement period, two of
12 your partners did, in fact, see that email, didn't
13 they?

14 A. I don't know if they did.

15 Q. Let's pull up Exhibit DX. Now, Exhibit DX,
16 the cover is an email from Mr. McLamb. He was the
17 partner on the audit; correct? One of the partners
18 involved in the audit; right?

19 A. He was our business unit professional
20 practice partner.

21 Q. Right. And he was involved in the audit of
22 Thornburg; correct?

23 A. He was involved in the going concern
24 analysis and then he was also involved in the
25 restatement activities.

1 Q. Right. And this is an email from him to
2 Michael Foley. And Michael Foley is one of the
3 people that you said was in the national office who
4 got involved when the decision to withdraw the audit
5 opinion became a topic of discussion; right?

6 A. Yes.

7 Q. And he became involved in the restatement;
8 correct?

9 A. Yes.

10 Q. And this is being sent on March 9, 2008;
11 right?

12 A. Yes.

13 Q. And that's after KPMG has decided to
14 withdraw the audit opinion; right?

15 A. Yes.

16 Q. And after the decision has been made to
17 restate the company's 2007 financial statements;
18 right?

19 A. That's right.

20 Q. And if we can go to the next page, there is
21 an attachment. Blow that up. Do you see he's
22 attaching a copy of Mr. Goldstone's board update
23 dated Monday, February 25. And you see it's the
24 exact same board update. Would you like to compare
25 them side by side?

1 A. No, I see it is the update that Mr.
2 Goldstone provided to his board.

3 Q. Right. And so two of your partners
4 actually saw this email during the restatement
5 period; right?

6 A. Yes.

7 Q. And they saw it during -- in the course of
8 the work that members of KPMG were doing in order to
9 assess the circumstances surrounding the restatement
10 and in order to assess whether KPMG should withdraw
11 from its association with Thornburg as a client;
12 correct?

13 A. Yes.

14 Q. And one of the things that KPMG did as part
15 of that work that it was doing during the restatement
16 period was to review emails; correct?

17 A. At least this email, and we also asked for
18 email correspondence between the company and its
19 counterparties associated with the margin call
20 activity in the last two weeks. So we did look at
21 some other emails, as well.

22 Q. Right. And you looked at management
23 emails, right, that this would reflect; correct?

24 A. That's right. It would indicate that Mr.
25 McLamb and Mr. Foley looked at this particular email.

1 I don't know if there were others that they looked at
2 from the company.

3 Q. And in fact, KPMG had unlimited access to
4 management's emails; correct?

5 A. I don't know that I would call it unlimited
6 access. We didn't do a forensic audit in that time
7 period. We asked the company to provide us with
8 emails, and they gave us certain emails in response
9 to that request.

10 Q. And isn't it a fact that KPMG would not
11 have permitted Thornburg to put any limitations on
12 the emails to which KPMG wanted access? Isn't that
13 true?

14 A. That's true.

15 Q. So KPMG could have had unlimited access and
16 did have unlimited access to Thornburg management's
17 emails; correct?

18 A. Again, that's difficult to say in the
19 context of which we were performing the restatement
20 procedures. We weren't conducting a forensic audit.
21 That would have taken weeks and weeks and weeks to do
22 an email retrieval activity.

23 Q. Well, the difference -- the distinction is
24 that whatever it is that KPMG decided to do and
25 whatever emails KPMG decided it wanted to review,

1 KPMG had unlimited access to Thornburg management
2 emails during the restatement period; correct?

3 A. In that period we obtained what we thought
4 was necessary.

5 Q. And in fact, as this Exhibit DX reflects,
6 however KPMG obtained it, whether KPMG went directly
7 into Thornburg's email system or whether it was
8 provided by members of Thornburg IT department or
9 whether it was provided by somebody else at
10 Thornburg, the February 25 board update was, in fact,
11 provided to and reviewed by KPMG; correct?

12 A. Yes.

13 Q. And it was, in fact, discussed, or it would
14 appear it was, in fact, discussed by two partners at
15 KPMG; correct?

16 A. Yes.

17 Q. Because the email from Mr. McLamb to Mr.
18 Foley says, "After you have read this, can you call
19 me?" And that would suggest that he wanted to have a
20 discussion about the contents of that email; correct?

21 A. I read that to be what he's asking.

22 Q. And even after reviewing this specific
23 email that you testified would have been important
24 for you see and know about in 2016, back in 2008 Mr.
25 McLamb concluded that management had not engaged in

1 fraud; correct?

2 A. That's correct.

3 Q. And even after seeing this email that today
4 you say you would have wanted to know about, Mr.
5 McLamb concluded back in 2008 that there are no
6 concerns about management's integrity; correct?

7 A. That's correct.

8 Q. That was back in 2008 before the SEC got
9 involved; right?

10 A. That's right.

11 Q. And before you had an incentive to say what
12 you think the SEC wants you to say; correct?

13 A. I have no incentive to say anything other
14 than the truth.

15 Q. So you didn't -- before coming in here
16 today, you didn't know that two of your partners had
17 actually reviewed the very email that you testified
18 yesterday you would have wanted to see?

19 A. I don't have a recollection, is all I'm
20 saying.

21 Q. Now, Mr. Kasper showed you -- let's go back
22 to the better copy of the February 25 board update.
23 Mr. Kasper pointed you to a sentence that says,
24 "Finally, we have been funding loans at a reduced
25 rate." And that is the fourth paragraph of that.

1 And the sentence reads, "Finally, we have been
2 funding loans at a reduced rate over the past few
3 days, and are working very hard at trying to add
4 warehouse capacity to enable us to pick up the
5 funding pace. I met with Credit Suisse today and we
6 are hopeful to open their warehouse line for an
7 additional \$50 million tomorrow. That would help our
8 customers a great deal." Do you see that?

9 A. Yes.

10 Q. And just to provide a little context, the
11 warehouse capacity or warehouse line is a type of
12 borrowing against individual mortgages, essentially;
13 right?

14 A. Right. The company funds loans and it uses
15 the warehouse to finance those until they're
16 securitized into one of the company's own structures.

17 Q. Right, right. And Mr. Kasper asked you
18 about the sentence and said, "Is this information you
19 would have wanted to know about"; right?

20 A. Yes, it would be.

21 Q. And in fact, during this period Thornburg
22 only stopped funding loans for one single day;
23 correct?

24 A. I don't know the number of days, but the
25 fact that they had stopped funding loans again was an

1 indication of the degree of the struggle that we --
2 would have added to our appreciation of what was
3 happening in that time period.

4 Q. Would you -- did you know at the time, did
5 you ever know that Thornburg only stopped funding
6 loans for one single day, or you just can't remember?

7 A. I didn't know at the time that we were
8 completing our audit and finalizing our report that
9 the company had stopped funding loans. That was
10 something I came to find out after the report had
11 been issued in the restatement period but after -- it
12 was one of the comments and communications that we
13 made to the audit committee that we became aware of.

14 Q. And you would agree that there is a
15 difference between stopping funding loans for a
16 single day and stopping funding loans for weeks or
17 months; correct?

18 A. There is a difference.

19 Q. And we can show you, if you want to see it,
20 or you can accept my representation, but we do have a
21 document, the company's own loan funding report, that
22 shows that the company stopped funding loans during
23 this period of time for only one single day. Do you
24 accept that?

25 A. I haven't seen the -- I don't know. I

1 haven't seen the report, so I'm really not able to
2 accept it or refute it, Mr. Lee.

3 Q. Well, let me hand you a document and see if
4 that either illuminates things or refreshes your
5 recollection.

6 MR. LEE: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. (By Mr. Lee) Ms. Reinhart, I've handed you
9 what's been marked for identification as Exhibit QB.
10 Do you see that?

11 A. Yes.

12 Q. It's a Thornburg locked/funded trend
13 report. Do you see that?

14 A. Yes.

15 Q. And you recognize the format of this report
16 from your work on the audit?

17 A. I'd have to say it's been a long time. I
18 don't recognize this, just straight up.

19 Q. If you see that on February -- so it's a
20 list of -- without bogging us down in details, it's a
21 list of dates and loan balances, loan funding
22 balances, and you see next to February 18, there is a
23 zero; correct?

24 A. Under the balance combined funded? Yes.

25 Q. Correct. And every other day that's shown

1 on this report up to the day of the filing of the
2 Form 10-K shows a positive balance of loan funding.
3 Do you see that?

4 A. Yes, I do.

5 Q. And so it's just one single day that shows
6 that no loans were funded during the period February
7 12 to February 28. Do you see that?

8 A. Yes.

9 Q. Now, as a point of comparison, in the third
10 quarter of 2007, Thornburg stopped funding loans for
11 several weeks or even longer. Do you recall that?

12 A. Yes, I do.

13 Q. And you knew that at the time; right?

14 A. Yes.

15 Q. And this was disclosed to the public at the
16 time; right?

17 A. I believe so, yes.

18 Q. And let's go to Exhibit EE. Now Exhibit EE
19 is the Form 10-Q for the third quarter, which is the
20 period ending September 30, 2007; correct?

21 A. Yes.

22 Q. And we haven't seen a lot of Form 10-Qs in
23 the case so far, but Form 10-Q is the quarterly
24 report that companies file with the SEC; right?

25 A. That's right.

1 Q. It's the quarterly analogue to the Form
2 10-K, which is the annual report; correct?

3 A. That's right.

4 Q. And if we can go to page 39. So in the
5 third quarter Form 10-Q, the company disclosed,
6 "Money originations totaled \$1.3 billion for the
7 third quarter and \$4.7 billion for the first nine
8 months of 2007, compared to our targets of \$2 billion
9 and \$5.1 billion respectively. As a result of
10 liquidity concerns and cessation of our loan fundings
11 for a portion of the third quarter our loan
12 commitment and funding loan volumes were
13 significantly reduced and the fallout-adjusted
14 pipeline of loans declined significantly to \$128.5
15 million at September 30, 2007, compared to \$831
16 million at June 30, 2007." Do you see that?

17 A. Yes.

18 Q. And it says then -- it goes on to say, "As
19 a result of recent mortgage rate adjustments that we
20 made during October, loan lock activity is beginning
21 to improve." Do you see that?

22 A. Yes.

23 Q. And so in the third quarter there had been
24 a significant decline in loan funding activity by
25 Thornburg; right?

1 A. That's right.

2 Q. And in the third quarter Thornburg stopped
3 being able to fund loans for several weeks or for
4 even more than a month; correct?

5 A. Yes.

6 Q. And KPMG was aware of that; correct?

7 A. That's right. The company told us about
8 that.

9 Q. And that was a significant drop off what
10 the company told you about; correct?

11 A. Yes.

12 Q. Much, much longer than a single day;
13 correct?

14 A. Longer than a single day, yes.

15 Q. And KPMG actually reviewed this language in
16 the Form 10-Q before it was filed; correct?

17 A. That's right. We did review it.

18 Q. And in connection with this Form 10-Q and
19 the quarterly report on Thornburg's financial
20 statements for the period ended September 30, 2007,
21 the company had impaired assets; correct?

22 A. Yes.

23 Q. And the company did not take an OTTI on
24 those impaired assets; correct?

25 A. Well, a number of impaired assets were

1 actually liquidated in connection with the
2 contraction of the commercial paper market and some
3 of the repurchase agreement lenders selling some of
4 the company's collateral in that time period. So
5 what they were left with was assets that were being
6 financed at that point in time that did have
7 impairments but had a liquidity source associated
8 with them.

9 Q. Right. So this is critical. So the
10 company sold a number of assets in August of 2007;
11 right?

12 A. They either sold them or their
13 counterparties sold them.

14 Q. And so for the assets that were sold, they
15 experienced actual losses; correct?

16 A. My recollection is, those losses were about
17 over a billion dollars, yes.

18 Q. And so those were losses on the sale -- say
19 they had a security that was on their books or that
20 the original cost was \$10 and they sold it for \$8,
21 they experienced an actual loss of \$2; right?

22 A. That's a correct calculation.

23 Q. And that's what actually happened. That's
24 one of the things that happened in the third quarter,
25 is that when the company actually sold certain of its

1 assets or when, as you say, certain of its assets
2 were sold, whether directly or indirectly, when
3 certain of its impaired assets were sold, the company
4 experienced and reported an actual loss on those
5 assets that were sold that had been impaired;
6 correct?

7 A. I would call it they recorded -- they
8 realized a loss, and that loss was recorded in the
9 income statement.

10 Q. Right. And that's because it was, the
11 assets were actually sold, so there wasn't any
12 question of an OTTI or not. The assets were actually
13 sold and the loss was incurred by the company;
14 correct?

15 A. That's right. Once they lost the ability
16 to hang on to those assets until they were no longer
17 underwater or reached maturity, that loss was
18 realized in their financial statements, yes.

19 Q. But the company didn't sell all of their
20 assets; correct?

21 A. That's right.

22 Q. And the company held on to some assets that
23 were still impaired; correct?

24 A. Yes.

25 Q. And those assets that the company held on

1 to that were still impaired, the company did not take
2 an OTTI; correct?

3 A. That's correct.

4 Q. And KPMG concurred with that determination;
5 correct?

6 A. We did.

7 Q. And so even though in the third quarter the
8 company had sold assets and realized an actual loss
9 of \$1.1 billion, the company did not need to take an
10 OTTI on the assets that it held on to; correct?

11 A. That's right.

12 Q. And even though the company stopped funding
13 loans for weeks or more during the 3rd quarter, the
14 company still did not need to take an OTTI on the
15 assets that it continued to hold, even though they
16 were impaired; correct?

17 A. That's correct.

18 Q. And we talked about context, when counsel
19 for the SEC asked you about the February 25 board
20 report that mentions the loan funding, and you
21 testified that it would have been important for you
22 to see that, or know that information, it would have
23 been useful context for the jury to know that the
24 loan funding had ceased during that time period for
25 only one single day when, in the third quarter, the

1 company had ceased funding loans for weeks and it
2 still hadn't affected the company's OTTI
3 determination.

4 A. February 25 board report?

5 Q. Correct.

6 A. February 25? I guess I'm not --

7 Q. That's the email, if we can just go back
8 to --

9 A. Oh, the email to the board. Okay. Got it.

10 Q. Yes. And counsel led you to answer a bunch
11 of questions, including questions about whether you
12 would have wanted to have known that information. It
13 would have been helpful context for the jury to
14 understand that that involved a cessation of loan
15 funding for only a single day in comparison to which
16 KPMG already knew that the company had stopped
17 funding loans for weeks in August, and it still had
18 not affected the OTTI determination.

19 A. Well, the distinction here is that in the
20 fall of 2007, in the third and fourth quarter, KPMG
21 is not getting ready to issue an audit report upon
22 which investors will be relying. So whether it was a
23 day, a week, a month, the degree of the struggle that
24 the board and the company -- the board was aware of
25 and the company was facing was information that we

1 wanted to know. And so that's what's important, is
2 context of informing us about the struggle, the
3 liquidity struggle and what the company was facing in
4 that time period.

5 Q. And isn't it, in fact, what is -- that you
6 actually hit on the key difference. In connection
7 with the third quarter 10-Q, KPMG did not issue an
8 opinion; right?

9 A. That's right. Auditors don't issue
10 opinions on quarterly reports.

11 Q. And that means the auditor didn't have the
12 same level -- KPMG didn't have the same level of
13 liability attached to the third quarter 10-Q;
14 correct?

15 A. That's right.

16 Q. By the way, when we were talking about the
17 February 22 board minutes and the fact that the Citi
18 call had been discussed in executive session, you
19 were aware before the filing of the Form 10-K that
20 Thornburg had received a margin call of a large
21 amount; isn't that right?

22 A. We were aware that the company had received
23 margin calls in the approximate range of \$300 million
24 in that last two-week period.

25 Q. If we can go to Exhibit 106, please. Now,

1 Exhibit 106 is another email that counsel for the SEC
2 asked you about. And this is an email from
3 Ms. Starrett to Ms. Hall, forwarding a draft of the
4 recent developments language; correct?

5 A. Yes.

6 Q. And you were not actually copied on this,
7 but it was eventually forwarded to you; correct?

8 A. That's right.

9 Q. And you understood that this draft language
10 is language that was to be inserted into the Form
11 10-K; correct?

12 A. Yes.

13 Q. And you understood that this draft language
14 was language that was to be inserted into the Form
15 10-K which was to be filed in approximately a day or
16 two or three after this draft was sent to you;
17 correct?

18 A. Not three days. The 10-K was filed, I
19 think, at 12:30 a.m. or we signed off on it at 12:30
20 a.m. on February 28th of 2008. So whatever that --
21 it wouldn't be three days, but a day and a half.

22 Q. But the Form 10-K was due to be filed by
23 February 29; correct?

24 A. That's right, because it was a leap year,
25 yes.

1 Q. And so it could have been filed at any
2 point, and really the driving force as to when it
3 could be filed was when KPMG had completed its audit
4 work; correct?

5 A. That's right.

6 Q. The 10-K could not be filed before KPMG was
7 done with its work; correct?

8 A. That's right.

9 Q. So it could have happened at any point in
10 time up to February 29; correct?

11 A. That's right.

12 Q. So you understood, when you got this draft,
13 that it was not for inclusion and dissemination to
14 the public immediately; correct?

15 A. That's right. It's an initial draft.

16 Q. And you knew that the audience for the
17 language was readers of the Form 10-K; correct?

18 A. Readers, you mean internal readers or --

19 Q. I'm sorry, that was not a clear question.
20 You understood that this language, the draft language
21 that was being circulated, was to be included in a
22 Form 10-K and so therefore the language itself was
23 intended for those who were going to be reading the
24 Form 10-K?

25 A. Yes.

1 Q. It was not meant to be a representation to
2 KPMG; correct?

3 A. Not intended to be a representation, but
4 it's our expectation that information that's provided
5 to us would be complete and accurate, even if it's in
6 draft form.

7 Q. But you understand that sometimes when
8 people draft documents, they draft documents with the
9 anticipation and understanding that they will be true
10 when they are finalized; correct?

11 A. No, I don't expect that I would get
12 anything other than something that's true. Maybe
13 number changes or grammar changes within the draft
14 document, but I always expect what's provided to me
15 as an auditor to be true.

16 Q. So you're not familiar with the dynamic or
17 the process in which people circulate drafts of
18 documents well before the draft is intended to be
19 finalized and that, therefore, the draft itself may
20 not actually be accurate? That doesn't ring a bell
21 to you?

22 A. The information may contain numbers that
23 are tentative or still a work in process, but I
24 always expect that the information that's provided
25 would be true in its context and faithful as to the

1 representation of the facts and circumstances.

2 Q. That wasn't my question, Ms. Reinhart. My
3 question was: Are you familiar with the drafting
4 process in which sometimes drafts are circulated that
5 are not true at the time the draft is circulated, but
6 are intended to be true when the draft is -- when the
7 document is final and complete and disseminated to
8 its audience?

9 A. I'm familiar with the drafting process, but
10 it's not been my experience that information is
11 provided to me that's not true at the time of the
12 draft.

13 Q. So your audit was completed on February 28;
14 correct?

15 A. It was completed -- the date of our report
16 was February 27th, so it included all activity of the
17 company's activity through the 27th of February and
18 the signoff date was -- or the time stamp,
19 effectively, was about 12:30, midnight, on February
20 28.

21 Q. Your audit wasn't concluded on February 18,
22 was it?

23 A. No, it was not.

24 MR. LEE: Your Honor, may I approach?

25 THE COURT: You may.

1 Q. (By Mr. Lee) Ms. Reinhart, I've handed you
2 what's been marked for identification as Exhibit QC.
3 Do you see that?

4 A. Yes, I do.

5 Q. And QC is an email from Meg Jones to you
6 with a copy to Ms. Hall. Do you see that?

7 A. Yes.

8 Q. And Meg Jones was a member of the
9 engagement team; correct?

10 A. Yes.

11 Q. And the title is "Draft opinion with
12 revisions." Do you see that?

13 A. Yes.

14 Q. And it's dated Monday, February 18. Do you
15 see that?

16 A. Yes.

17 Q. And it says, "Cynthia, here is the draft
18 opinion." Do you see that?

19 A. Yes, I do.

20 Q. And it is a draft of the audit opinion that
21 KPMG was going to issue in approximately nine days;
22 correct?

23 A. That's right.

24 Q. And first if you could turn your attention
25 to the first sentence, and just read to the jury that

1 first sentence.

2 A. Sure. "We have audited the accompanying
3 and consolidated balance sheets of Thornburg
4 Mortgage, Inc. and subsidiaries (the company), as of
5 December 31, 2007, and 2006, and the related
6 consolidated statements of operations, shareholders
7 equity, and cash flows for each of the years in the
8 two-year period ended December 31, 2007.

9 Q. And that wasn't actually true on February
10 18, was it?

11 A. It wasn't actually true?

12 Q. You hadn't actually completed your audit on
13 February 18?

14 A. No, we had not concluded our audit, no.

15 Q. Even though this draft letter says, "We
16 have audited the financial statements"?

17 A. That's right.

18 Q. And the last paragraph says, "In our
19 opinion, the consolidated financial statements
20 referred to above fairly present in all material
21 respects the financial position of Thornburg, et
22 cetera, in conformity with accounting principles
23 generally accepted in the United States"; correct?

24 A. That's right.

25 Q. And even though the letter says that, you

1 hadn't yet concluded that; correct?

2 A. We hadn't concluded it, but everything in
3 the report is accurate and the draft is, in fact,
4 substantially unchanged from the final version that
5 was filed with the Securities and Exchange Commission
6 on the 28th of February.

7 Q. Right. But on February 18 it was not
8 accurate; correct?

9 A. No. Well, we provided a draft so the
10 company had something to provide to the person that
11 was typing the document so they didn't have to do it
12 all at the last moment.

13 THE COURT: Mr. Lee, which document are you
14 looking at?

15 MR. LEE: I'm sorry, I handed it to
16 Ms. Wild.

17 THE CLERK: I apologize.

18 THE COURT: I'm sorry.

19 Q. (By Mr. Lee) Now, if we can pull up
20 Exhibit 62. Exhibit 62 is another one of Mr.
21 Goldstone's emails to the board and this one is dated
22 February 21. Do you see that?

23 A. Yes.

24 Q. And this is another email to the board or
25 board update, as we've been calling them, that you

1 testified you would have wanted to know about;
2 correct?

3 A. Yes.

4 Q. Or at least you either would have wanted to
5 know about the email itself or about the information
6 in the email; correct?

7 A. That's right.

8 Q. And Mr. Kasper pointed you specifically to
9 the language in item number 6. Do you see that?
10 Item number 6 says, "We may undertake additional
11 asset sales, depending on how market conditions
12 evolve over the next few weeks, offsetting previously
13 mentioned gains." Do you see that?

14 A. Yes.

15 Q. And you suggested that that sentence was
16 inconsistent with the company's assertion of its
17 intent and ability to hold in connection with OTTI;
18 correct?

19 A. Right, that would be an indication that
20 they intended to dispose of certain assets.

21 Q. That doesn't indicate an intention to
22 dispose. It says, "We may undertake." Do you see
23 that?

24 A. Yes, it says "We may undertake," but it is
25 an indication that the company is thinking, based

1 upon its liquidity situation, that it may need to
2 undertake those asset sales in order to meet those
3 liquidity needs. Not for any other purpose that I
4 can see here.

5 Q. And what you didn't point out when you
6 answered the SEC's questions about this, suggesting
7 that this was somehow concealed from KPMG, you didn't
8 point out that the recent developments section of the
9 Form 10-K includes almost identical language, did
10 you?

11 A. No, I did not.

12 Q. And let's go to Exhibit EF. This is the
13 Form 10-K and let's go to page 35. Blow that
14 sentence up. That sentence says, "In the event that
15 we cannot meet future margin calls from our available
16 cash position, we might need to selectively sell
17 assets in order to raise cash." Do you see that?

18 A. I do.

19 Q. And so in the board update on February 21,
20 Mr. Goldstone used the word "may." Do you see that?

21 A. Yes.

22 Q. And in the disclosure which KPMG reviewed
23 before the filing, the company used the term "might."
24 Do you see that?

25 A. Mr. Lee, can I see the broader context of

1 where this is within the 10-K, this disclosure?

2 Q. Sure.

3 A. And even back in this -- MD&A item 7
4 executive overview. Is that where it is?

5 Q. If you like, if it's easier, I'm happy to
6 hand you a hard copy.

7 A. That would be helpful, please.

8 MR. LEE: If I may?

9 THE COURT: You may.

10 Q. (By Mr. Lee) This is the same binder that
11 the SEC gave you, so I don't know what tab it is, but
12 I assume it's the thickest document.

13 MR. KASPER: That's 321.

14 A. Okay.

15 Q. It is actually easier to use a hard copy
16 than look at a long document electronically. So you
17 see page 35, it's under the section entitled "Recent
18 developments"?

19 A. I do.

20 Q. And so in the recent developments section
21 which KPMG reviewed, the company disclosed that it
22 might need to selectively sell assets; correct?

23 A. That's correct.

24 Q. And in Mr. Goldstone's email to the board
25 on February 21, that was sort of supposedly

1 concealed, Mr. Goldstone reported, "We may undertake
2 additional asset sales." Do you see that?

3 A. Yes.

4 Q. So there was nothing hidden about the
5 possibility that the company either may or might
6 undertake asset sales, was there, because it's right
7 there in the Form 10-K.

8 A. That's right.

9 Q. If we can go to Exhibit 58, please, Exhibit
10 58 is an email from Eric Smith at Credit Suisse to
11 two Thornburg employees, Patrick Feldman and Daniel
12 Petrush; correct?

13 A. Yes.

14 Q. Dated February 20?

15 A. Yes.

16 Q. And it's forwarding an email from Tanya
17 Miller at Credit Suisse to Digna Rivera at Credit
18 Suisse copying Eric Smith and George Pawlowski. Do
19 you see that?

20 A. Yes.

21 Q. Other than Patrick Feldman, do you know any
22 of the individuals on this email?

23 A. No.

24 Q. And this is another email that the SEC
25 asked you to speculate about and interpret, even

1 though you're not on it and you don't even know the
2 people on it except for Patrick Feldman, do you?

3 A. No, but I can read it and understand it.

4 Q. Okay. Now, the part that you believe you
5 can read and understand was about outstanding margin
6 calls; correct?

7 A. That's right.

8 Q. Do you know whether the margin calls
9 reported in this email are on Thornburg's reverse
10 repurchase agreements?

11 A. It looks like it is, because the securities
12 that are listed below the amounts are securities from
13 their portfolio. There is a Countrywide. There is a
14 BSARM. There is an IndyMac. There is a B of A, a
15 Bear Stearns, and they're identifying the prices in
16 terms of how the price has declined on those specific
17 securities.

18 Q. And you know there are actually different
19 types of margin calls; correct?

20 A. Different types of margin call?

21 Q. There are margin calls on Thornburg's
22 reverse repurchase agreements; right?

23 A. That's right.

24 Q. And that's what -- when we have talked
25 generally in this case about margin calls, we've

1 generally been referring to margin calls on reverse
2 repurchase agreements; correct?

3 A. That's right.

4 Q. But there are also margin calls on swap
5 agreements; correct?

6 A. That's right. There are.

7 Q. And swap agreements are a whole different
8 type of instrument that aren't at issue in this case,
9 at least as you understand it; right?

10 A. That's correct. They're derivatives.

11 Q. And the company can also receive and make
12 margin calls on swap agreements; right?

13 A. That's right. The company can receive?

14 Q. The company can receive margin calls and
15 the company can make margin calls, just as it can
16 with reverse repurchase agreements.

17 A. Yes.

18 Q. It can on swap agreements, too?

19 A. On the value; right.

20 Q. And those are different from reverse
21 repurchase agreements' margin calls; right?

22 A. That's right. They still require a
23 settlement of cash between the company and its lender
24 or counterparty in the case of a swap agreement, the
25 exchange of cash.

1 Q. And of this 76 million that you testified
2 about yesterday, do you know what portion of those
3 are actually swap margin calls and are not reverse
4 repurchase agreement margin calls?

5 A. I do not. I do see that they're
6 outstanding for more than the time period that would
7 be provided within the repo agreements, two days, a
8 day, and then new. So that tells me that there is a
9 delay in settling the actual cash that's required.

10 Q. Well, let's take a look at Exhibit 59 for a
11 second. Exhibit 59 is a liquidity report from Ralph
12 Ahn to various people at Thornburg dated February 20.
13 Do you see that?

14 A. I do.

15 Q. Let's go to the first asterisked paragraph.
16 It says, "We were able to meet \$59 million of the \$79
17 million CSFB margin call by matching it with the
18 non-AAA pieces. \$20 million of that margin call is
19 due to swap auction calls which they demanded cash
20 for and we have yet to meet, although we think that
21 will be reduced to \$15 million for today." Do you
22 see that?

23 A. Yes.

24 Q. So if we can go back to Exhibit 58, when
25 you look at these two documents side by side, would

1 you agree with me that only approximately \$59
2 million, not \$77 million, relate to reverse
3 repurchase agreements; correct?

4 A. That --

5 Q. The margin calls on reverse repurchase
6 agreements?

7 A. That looks right, yes.

8 Q. And you don't have an understanding of how
9 many days Thornburg has to pay margin calls on swap
10 agreements, do you?

11 A. I don't have a recollection. At the time I
12 may have.

13 Q. So when counsel for the SEC showed you this
14 document, Exhibit 58, and asked you what it meant,
15 even though you're not on it, you just immediately
16 jumped to the conclusion that all of it was related
17 to reverse repurchase margin calls, didn't you?

18 A. I concluded from this that there were
19 margin calls that were outstanding for more than a
20 day's period, two days', one day's and a new margin
21 call for \$76.6 million. So my point is that the
22 email, as I read it, was indicative of the struggle
23 that the company faced at that time that we weren't
24 aware of.

25 Q. But Ms. Reinhart, "outstanding" doesn't

1 mean late, does it? "Outstanding" simply means
2 unpaid?

3 A. It was the practice of the counterparties
4 and the repo agreements to require settlement on a
5 daily basis.

6 Q. Under swaps? You just testified you
7 weren't familiar with the terms of swaps.

8 A. Under the repo agreements.

9 Q. Right. So you didn't point out that only
10 \$59 million of this \$77 million related to repo
11 agreements for which payment is ordinarily due within
12 one day, did you?

13 A. Was it \$59 million or was it \$56.6 million?

14 Q. Either. You didn't point out that only
15 two-thirds of this amount related to the margin calls
16 at issue in this case?

17 A. No, I didn't.

18 Q. And the reason you didn't was the SEC
19 wasn't interested in asking you about the context for
20 any of these emails, was it?

21 A. The question that I was asked was whether
22 or not I had seen this email and whether I would have
23 wanted to, I think, know about it at the time that we
24 were rendering our opinion. And that is information
25 that I've previously testified to that would have

1 been important to us, as the external auditors, to
2 know before we issued our report.

3 Q. Would it have been important for you to
4 understand the different types of margin calls and
5 the payment terms thereof?

6 A. Yes, it would have been important for
7 someone to come and talk to us about the fact that
8 the company was facing this struggle, and help us
9 understand exactly what was happening. But that
10 wasn't the case.

11 Q. And in fact, you referred to the struggle.
12 You knew about the struggle; right? You knew the
13 company had extremely low levels of liquidity in the
14 two weeks leading up to the filing of the Form 10-K,
15 didn't you?

16 A. We knew about a part of that struggle. We
17 didn't have an appreciation, no, just how severe or
18 dire the struggle was.

19 Q. You knew that the company at one point had
20 \$476,000 in available cash; correct?

21 A. I don't have a specific recollection.

22 Q. And when the SEC asked you about this
23 email, you didn't believe it was important to
24 identify either the context, to identify the fact
25 that this includes different types of margin calls,

1 to identify the fact that one-third of this total
2 amount of margin calls doesn't have anything to do
3 with this case at all, or to identify the fact that
4 you don't know the terms of payment for swap margin
5 calls, as you sit here today; correct?

6 THE COURT: Mr. Kasper?

7 MR. KASPER: Objection, Your Honor. This
8 is both argumentative and compound.

9 THE COURT: Well, it is compound, but I'm
10 going to overrule it. If Ms. Reinhart can answer the
11 question, I'll allow her to answer it.

12 THE WITNESS: Could you read the question
13 back.

14 THE COURT: "And when the SEC asked you
15 about this email, you didn't believe it was important
16 to identify either the context, identify the fact
17 that this includes different types of margin calls,
18 identify the fact that one-third of this total amount
19 of margin calls doesn't have anything to do with this
20 case at all, or to identify the fact that you don't
21 know if the terms of the payment for swap margin
22 calls as you sit here today."

23 A. Thank you. I believe that when I was shown
24 the email, it was information that was new to me. I
25 hadn't previously seen it during the course of the

1 audit, and I communicated that it was information
2 that I would have wanted to have known. I would have
3 liked to have known all of the things that you
4 described, Mr. Lee. But I've really never had the
5 opportunity to delve into that detail.

6 Q (By Mr. Lee) Now let's go to Exhibit 45.
7 This is another email from Mr. Goldstone to members
8 of the board that you said you would have liked to
9 have seen. This is dated February 15; correct?

10 A. I would have liked to have known about the
11 information being communicated to the board, and if
12 that would be to give me the email, whatever is the
13 most expedient; but to communicate to the external
14 auditor, the audit partner, about this kind of thing.

15 Q. Yesterday you testified -- I don't know
16 which specific emails, but yesterday you were asked
17 whether you would have wanted to see certain emails
18 themselves. And you said yes. Do you recall that?

19 A. I do.

20 Q. Now, I'd like to draw your attention to a
21 sentence in the middle of the second paragraph. This
22 sentence says, "Fortunately, we were able to meet or
23 negotiate a way to meet all of those margin calls
24 today, and are in the process of raising additional
25 cash next week in order to meet expected further

1 margin calls." Do you see that?

2 A. Yes.

3 Q. And presumably you don't know what Mr.
4 Goldstone meant by reference to negotiating a way to
5 meet certain margin calls, do you?

6 A. I do not.

7 Q. And you don't know that, in fact, CSFB,
8 Credit Suisse, had agreed to give Thornburg
9 additional time to meet a margin call; correct?

10 A. I was not told that, no.

11 MR. LEE: Your Honor, may I approach?

12 THE COURT: You may.

13 Q. (By Mr. Lee) Ms. Reinhart I've handed you
14 what's been marked as Exhibit QB, I believe.

15 THE COURT: You handed me one that says QD.

16 Q. I apologize. QD?

17 A. Yes.

18 Q. Exhibit QD is the internal -- do you
19 recognize that as an internal message through a form
20 of text messaging known as Bloomberg messaging?

21 A. I see that it's from Eric at Credit Suisse
22 to Patrick Feldman at Thornburg Mortgage.

23 Q. And you see it has the email address from
24 EricSmith@Bloomberg.net?

25 A. Yes.

1 Q. And you're familiar that traders and those
2 in the financial markets often communicate via what's
3 called a Bloomberg messaging system, which is
4 essentially a form of text messaging?

5 A. Yes.

6 Q. And it's an email from Eric Smith dated
7 February 15 to Patrick Feldman, and the subject is:
8 "I have that index piece that settles today lined up
9 for repo." Do you see that?

10 A. Yes.

11 Q. And the message says, "Great." This is
12 from Eric Smith. "Great. Buccola agreed to postpone
13 settlement to Tuesday." Do you see that?

14 A. I do.

15 Q. So you weren't aware that, in fact, Credit
16 Suisse had agreed to give Thornburg additional time
17 to pay that margin call. That was the negotiation
18 referred to by Mr. Goldstone. You weren't aware of
19 that, were you?

20 A. No, no one told me that.

21 Q. And that's the danger of jumping to
22 conclusions from emails without seeing the context,
23 isn't it?

24 A. That's right. That's certainly the danger.
25 But if there is a modification to an agreement that

1 is outside of what the auditors have in their
2 possession, management needs to bring that to the
3 attention of the external auditors.

4 MR. LEE: Your Honor, I'd offer Exhibit QD
5 into evidence.

6 THE COURT: Any objection?

7 MR. KASPER: Yes, Your Honor, lack of
8 timeliness. We didn't have this document previously.

9 THE COURT: Well, I think you've gotten
10 what you want out of it. But I'm not going to admit
11 the document because of its late disclosure.

12 MR. LEE: Well, may I be heard on that,
13 Your Honor?

14 THE COURT: You may.

15 (The following proceedings were held at the
16 bench.)

17 THE COURT: This is all that was handed to
18 the Court, so I don't have the document.

19 MR. LEE: I'm sorry. We were trying to
20 save paper, Your Honor. I believe it's two-sided.
21 And the cover page refers to an exhibit from the MSJ.
22 So the SEC has been well aware of this. We have --
23 we're seeking to introduce it as impeachment for the
24 fact that, you know, there was this -- the
25 implication that there was somehow a breach of the

1 agreement where clearly Credit Suisse is agreeing to
2 allow delayed payment. And by the way, it didn't
3 either declare a default or even send a reservation
4 rights letter.

5 MR. KASPER: Your Honor, not only is the
6 document out of time, it contains hearsay, and this
7 particular version of it certainly shouldn't be
8 allowed to go to the jury. The box on this is not
9 something done by Mr. Smith or anyone else. It's
10 something done by defendants' counsel. So the
11 document has effectively been, you know, altered.

12 MR. LEE: Fair, I agree with that latter
13 part.

14 THE COURT: We're not going to bring in
15 additional documents. I think this testimony could
16 have been anticipated and this rebuttal, as you call
17 it. I think it's just cross-examination material
18 that could have been anticipated. So I'm going to
19 keep the document.

20 MR. KASPER: Thank you, Your Honor.

21 MR. LEE: Thank you, Your Honor.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: Mr. Lee, would this be a good
25 time for us to take our break?

1 MR. LEE: Yes, Your Honor.

2 THE COURT: Do you want to finish something
3 up?

4 MR. LEE: No, Your Honor. This is a good
5 time.

6 THE COURT: We'll be in recess for about 15
7 minutes. Hold on. You sit there.

8 Mr. Chavez, why don't you open the door.

9 (The jury left the courtroom.)

10 THE COURT: Anything we need to discuss?

11 MR. McKENNA: No, thank you, Your Honor.

12 MR. LEE: No, Your Honor.

13 THE COURT: All right. We'll be in recess
14 for 15 minutes.

15 (The Court stood in recess.)

16 THE COURT: Is there anything to discuss
17 before the jury comes back in? Mr. McKenna?
18 Mr. Lee?

19 MR. McKENNA: No, Your Honor.

20 MR. LEE: No, Your Honor.

21 (The jury entered the courtroom.)

22 THE COURT: All right. Everyone be seated.

23 All right, Ms. Reinhart, I'll remind you
24 that you're still under oath.

25 Mr. Lee, if you wish to continue your

1 cross-examination of Ms. Reinhart, you may do so at
2 this time.

3 MR. LEE: Thank you, Your Honor.

4 THE COURT: Mr. Lee.

5 Q. (By Mr. Lee) Could we please call up
6 Exhibit 62? Ms. Reinhart, I have back on the screen
7 Exhibit 62, which is the board minutes from February
8 21. Do you see that?

9 A. Board minutes?

10 Q. I'm sorry. My mistake. It's the update
11 from Mr. Goldstone to the board on February 21.

12 A. Yes.

13 Q. And we talked -- if we can go down to
14 paragraph 6, we talked before the break about the
15 language about the fact that the company may
16 undertake additional assets sales; right?

17 A. Yes.

18 Q. And we compared that to the disclosure in
19 the Form 10-K in the recent developments section
20 where it was disclosed that the company might
21 undertake additional asset sales. Do you recall
22 that?

23 A. Yes.

24 Q. And in fact, the Form 10-K was not the
25 first time you had seen from the company the

1 contemplation of possible asset sales; correct?

2 A. It wasn't the first time I saw that
3 language; that's correct.

4 Q. And if we can go back to Exhibit 106, this
5 is the draft that Ms. Starrett is forwarding to KPMG
6 on February 26 of recent developments language, and
7 if we can go to the second page. And if we can go to
8 the sentence that says, "As we have stated
9 previously," about a third of the way down. So even
10 on February 26, the company was informing you that in
11 the event that it cannot meet margin calls from its
12 available cash, it might need to selectively sell
13 assets to raise cash. Do you see that?

14 A. I do see that, yes.

15 Q. And you would agree that that's essentially
16 the language that ended up in the Form 10-K; correct?

17 A. I believe so.

18 Q. And when you saw this, you reviewed this
19 draft; right?

20 A. Yes, I did.

21 Q. You never expressed any surprise about the
22 fact that the company might need to sell assets, did
23 you?

24 A. No, I didn't express any surprise, no.

25 Q. You never went back to the company to ask

1 questions about that statement that the company might
2 need to sell assets, did you?

3 A. No. I did talk to the company. I talked
4 to specifically Mr. Simmons and Ms. Starrett about
5 their intent and ability to hold their securities in
6 connection with our down-to-date meeting, and they
7 indicated that they had both the intent and
8 ability -- the company had the intent and ability to
9 hold those assets to recovery or maturity.

10 Q. You never went to anybody at the company
11 and said, "Wait a second. I didn't know you might
12 need to sell assets." You didn't have that
13 conversation, did you?

14 A. I don't have a recollection, no.

15 Q. You didn't say to any of your colleagues at
16 KPMG, "Wait a second. This is a huge surprise. We
17 didn't know that the company might need to sell
18 assets," did you?

19 A. I didn't put it that way, no.

20 Q. And you testified in reference to Exhibit
21 62, the email to the board, that had you seen that
22 information you would have wanted to ask additional
23 questions; right?

24 A. Had I seen all of the information. It's
25 just not one bit of information, but the full context

1 of the struggle that was occurring at that particular
2 time is information that I, as the audit partner,
3 would have wanted to know in the time period that the
4 company was facing those circumstances.

5 Q. And Mr. Kasper, when he asked you about the
6 board email on February 21, he specifically called
7 out that paragraph, didn't he, and he asked you if
8 this was information you would have wanted to know;
9 right?

10 A. Yes, I believe he did.

11 Q. And you said you would have wanted to ask
12 more questions and understand the circumstance
13 better; right?

14 A. Yes.

15 Q. But even though you were told that exact
16 same thing on February 26, you never went and asked
17 more questions, did you?

18 A. We had a number of conversations. But I
19 didn't ask a specific question about this.

20 Q. And in fact, you just referenced you would
21 have wanted to know about the struggle that the
22 company was facing. That also is disclosed in this
23 language, isn't it? This draft language discloses
24 the volatility and difficulty in the mortgage
25 markets, the stress on the company's liquidity, the

1 receipt of margin calls, and the possibility that
2 these conditions could continue into the future;
3 right?

4 A. That's what that language says, yes.

5 Q. And you didn't follow up and express any
6 alarm or surprise or ask additional follow-up
7 questions after you got this draft, did you?

8 A. No, I did. I asked Mr. Simmons what his
9 view of the collateral was, and that's when he
10 expressed to us that he didn't believe that the
11 likelihood of a further 2 to 3 percent decline was --
12 he thought that that was remote, I think were his
13 words that he put it in.

14 Q. And that was in the down-to-date meeting?

15 A. Yes, it was.

16 Q. And on February 26 after you got this, you
17 didn't write to any of your KPMG colleagues and
18 express alarm or concern about these circumstances,
19 did you?

20 A. I didn't write to them. I think we
21 discussed them and they reviewed drafts of the Form
22 10-K. Mr. Womack reviewed a draft of the Form 10-K
23 language in the recent developments, and Mr. Taylor
24 also reviewed a draft of the language, as well, and
25 Ms. Hall.

1 Q. And the possibility that the company might
2 need to sell assets remained essentially unchanged in
3 the eventual Form 10-K language; right?

4 A. That's correct.

5 Q. And you would agree with me you had as much
6 time as you needed to review this language; right?

7 A. We did.

8 Q. You weren't under any time pressure, were
9 you?

10 A. No.

11 Q. And in fact, the timing of when KPMG will
12 issue its audit opinion is solely up to KPMG;
13 correct?

14 A. Well, there are deadlines that are stated
15 by the Securities and Exchange Commission, so the
16 timing is based upon that calendar. But we take as
17 much time as we need to do our work to be able to
18 render our opinion.

19 Q. And if you needed more time to ask
20 questions about the possibility that the company
21 might need to sell assets, you could have had that
22 additional time; right?

23 A. We could have had that additional time,
24 yes.

25 Q. And in fact, if you thought it was

1 important, you would have insisted on having that
2 additional time; correct?

3 A. If we had been informed of the degree of
4 the company's liquidity situation, we would have
5 taken more time, yes.

6 Q. And if you had had additional questions
7 about the statement in this recent developments
8 disclosure about the company's -- about the fact that
9 the company might need to sell assets, you could have
10 taken more time to follow up on that; correct?

11 A. Yes, if we had questions, yes.

12 Q. Now, if we can just go back briefly to
13 Exhibit DX. Now, this is the version of the February
14 25 email update to the board that was reviewed by two
15 KPMG partners; right?

16 A. Yes.

17 Q. And if we can go to the actual email again,
18 I just wanted to note one additional portion. Go to
19 the very last full paragraph, that full paragraph.

20 The last substantive paragraph of Mr.
21 Goldstone's February 25 update says, "It's really
22 tough out there, but we are succeeding under very
23 difficult circumstances. Friday is quarter end for
24 many Wall Street dealers, and it will not be a good
25 quarter. Billions will be written off when earnings

1 are released. That is why it is imperative that we
2 raise more money. Markets are really struggling."
3 Do you see that?

4 A. I do.

5 Q. And that's Mr. Goldstone's disclosure of
6 his view of market conditions to the board on
7 February 25; right?

8 A. That's right.

9 Q. And that was reviewed by two KPMG partners
10 during the restatement period; right?

11 A. During the restatement period, yes.

12 Q. And even after reviewing this language from
13 Mr. Goldstone, those partners concluded that there
14 were no concerns about management integrity; correct?

15 A. That's right.

16 Q. Now, yesterday you testified about the
17 terms of Thornburg's repurchase lending agreement
18 with Citibank; right?

19 A. Yes.

20 Q. And I believe you testified that you were
21 familiar with that document?

22 A. Yes.

23 Q. And you testified that you had had occasion
24 to review it in the course of your work on the
25 Thornburg engagement?

1 A. Yes.

2 Q. And you testified that Thornburg had
3 similar agreements with other lenders; correct?

4 A. Yes.

5 Q. And you testified that you also reviewed
6 those other agreements; right?

7 A. Me or members of my team did, yes.

8 Q. And you said that the Citi agreement
9 required payment of a margin call within one day?

10 A. Yes.

11 Q. And that the lender ultimately determined
12 the amount of the margin call; correct?

13 A. That's my understanding, yes.

14 Q. You also said that if Thornburg declared --
15 or if the lender, rather, declared an event of
16 default, there were consequences for Thornburg's
17 other repo agreements; correct?

18 A. That's right.

19 Q. And you said there were cross-default
20 provisions, which means that a default under the Citi
21 agreement would trigger defaults under other repo
22 lending agreements; correct?

23 A. Repo lending agreements as well as other
24 lending arrangements that the company had with
25 nonrepo lenders.

1 Q. And since you reviewed the lending
2 agreement with Citibank, you believed it was
3 important to understand; correct?

4 A. Yes.

5 Q. And it was an important document to
6 understand as part of KPMG's going concern analysis;
7 correct?

8 A. As part of the liquidity analysis and the
9 OTTI analysis, as well as just understanding how the
10 terms of the agreements worked and how they were
11 reported and reflected in the financial statements.
12 A whole number of reasons as to why they were
13 important to read and understand.

14 Q. And if we can pull up Exhibit 10, please.
15 Exhibit 10 is the agreement, the repo lending
16 agreement with Citigroup that you referred to
17 yesterday; right?

18 A. Yes.

19 Q. And so let's take a look. And it's a legal
20 document, so it will take a little navigating, but
21 let's take a look to see what the terms of that
22 agreement actually provide. All right?

23 First, let's go to page 9. Actually, let's
24 go to paragraph 5.4 of the agreement, which is on
25 page 8 of the actual agreement, page 9 of the

1 document. This section is entitled "Marking to
2 market of collateral during the currency of a loan on
3 aggregated basis." And if we go to the paragraph
4 marked 3(i). It says, "If at any time on any
5 business day the aggregate market value of the posted
6 collateral in respect of all loans outstanding under
7 this agreement falls below the aggregate of required
8 collateral values in respect of all such loans,
9 borrower shall, on demand, provide such further
10 collateral to lender as will eliminate the
11 deficiency." Do you see that?

12 A. Yes.

13 Q. And would you agree with me that this sets
14 forth the terms governing when the lender can make a
15 margin call; correct?

16 A. Yes.

17 Q. And would you agree with me that this sets
18 forth, as the sort of trigger point, if you will, for
19 a margin call the defined term market value of the
20 collateral; right? It's by reference to market
21 value. Do you see that?

22 A. Yes.

23 Q. And would you agree with me that then the
24 only way Citibank under this agreement can make a
25 margin call is if the posted collateral -- the market

1 value of the posted collateral declines below the
2 required collateral value?

3 A. Yes.

4 Q. And so this agreement sets forth a specific
5 circumstance required in order to trigger a margin
6 call; correct?

7 A. Right.

8 Q. Now let go to the definition of "market
9 value" which is on page 3 carrying over to page 4 of
10 the agreement. And you see this defines the term
11 "market value" which -- for purposes of whether a
12 margin call can be triggered; right?

13 A. Yes.

14 Q. And it essentially says that the market
15 value is pegged to a price equal to a market quote or
16 to some other reputable source, trying to simplify
17 it. But would you agree that that is essentially
18 what this says?

19 A. Right. That's the first step.

20 Q. For determining market value. And so it
21 requires reference to either a bid price in (i), or
22 prices or rates bid by a reputable dealer for a
23 relevant instrument, for a comparable instrument;
24 correct?

25 A. Are you looking at (i) or --

1 Q. Well, both.

2 A. Both. Right. So if you can't get a price,
3 if you can't return a price for that specific
4 security, you take a similar security with similar
5 terms, similar types of products, similar coupon, and
6 you price off that.

7 Q. Right. Right. And you would agree, then,
8 that if the bank has not -- if any bank has not made
9 a margin call in accordance with the terms of this
10 agreement by reference to the defined term market
11 value, it would not be a proper margin call. Would
12 you agree with that?

13 A. I don't know. Is there a third (i),
14 3(iii)?

15 Q. There is just a further -- sure. We can
16 try to pull it up. I don't think it sets forth the
17 definition of market value, but sure, if you want to
18 scroll down to paragraph 3(i)?

19 A. My recollection of the agreement is that is
20 a provision in there that the counterparty is the
21 ultimate determinant of the value of the collateral
22 if there is a disagreement or a dispute.

23 Q. But my point is that a counterparty can't
24 just issue a margin call on a whim; correct?

25 A. On a whim, no.

1 Q. And would you agree with me that there is
2 an actual legal document, this agreement, that sets
3 forth the terms and conditions under which a
4 counterparty can issue a margin call?

5 A. Yes.

6 Q. And would you agree with me that that sets
7 forth particular indexes or data points that the
8 counterparty is required to look to in order to
9 determine whether a margin call is appropriate?

10 A. I don't have a recollection of that
11 agreement in mind. If you're referring to a second
12 agreement?

13 Q. No, I'm sorry, it may be a little
14 confusing. I'm referring to this agreement. Would
15 you agree with me that this agreement includes a
16 particular definition of the index or metric that can
17 be used to define market value?

18 A. I can't recall without looking at the
19 provision that you're thinking of, Mr. Lee.

20 Q. Well, I'm referring to the fact that one
21 has to either obtain a price from a reputable pricing
22 source, or bids or prices for comparable instruments.

23 A. Yes.

24 Q. And if we can turn to page 18 of the
25 agreement under "Events of default," this sets

1 forth -- this paragraph, section -- sets forth the
2 various ways in which a party can default under the
3 agreement; correct?

4 A. Yes.

5 Q. And by reference to the highlighted
6 section, "Events of default" under 2(i), either the
7 lender or the borrower can be declared in default
8 under this agreement; correct?

9 A. That's correct.

10 Q. So Thornburg could be declared in default
11 for failing to comply with its obligations; correct?

12 A. Yes.

13 Q. And the lender can be declared in default
14 for failing to comply with its obligations; correct?

15 A. Yes.

16 Q. And paragraph 5, which we looked at before,
17 section 5 includes the provision that a margin call
18 has to be triggered by reference to the term market
19 value. Do you recall that?

20 A. Yes, I do.

21 Q. And so a violation of that term by a lender
22 could result in a default by the lender; right?

23 A. Yes, either party.

24 Q. Right. And if we can go back to the events
25 of default section. And this section for an event of

1 default also requires a written notice of an event of
2 default; correct?

3 A. Yes.

4 Q. And a reservation of rights letter would
5 not be the same, would not satisfy a written notice
6 for purposes of this agreement to declare an event of
7 default; correct?

8 A. I don't know without speaking to legal
9 counsel, but again, I think this is the fact that the
10 company had received a reservation of rights letter
11 under a cover email that said notice of default or
12 something similar was something we wanted to have
13 known at the time.

14 Q. I understand that there are various things
15 you say you would have wanted to know. My question
16 is a more straightforward one, which is that a
17 reservation of rights letter is not the same as a
18 written notice of default under the terms of the
19 actual lending agreement, is it?

20 A. I don't know, sitting here. I'd have to
21 have taken a look at it and talked to counsel about
22 whether or not it was a legal default or not.

23 Q. Now, under the agreement, assuming that is
24 a valid margin call, the repayment must be made
25 within the same business day, correct, as a general

1 principle?

2 A. Yes. General principle is one day, same
3 day.

4 Q. Let's look at section 9 of the agreement.
5 I'm sorry, page 9, paragraph 5.8. This says, "Timing
6 of repayments of excess collateral or deliveries of
7 further collateral." Would you agree that this
8 governs the timing within which a borrower would have
9 to meet a margin call?

10 A. Yes.

11 Q. And you notice how it says, "Where any
12 equivalent collateral fails to be repaid or
13 redelivered, as the case may be, or further
14 collateral is to be provided under paragraph 5 unless
15 agreed between the parties, it shall be delivered on
16 the same business day." Do you see that?

17 A. Yes.

18 Q. So the terms of the agreement itself
19 contemplate that the parties can agree to a different
20 payment provision; correct?

21 A. Yes.

22 Q. So this agreement wouldn't have to be
23 modified in order for the parties to agree otherwise
24 as to the payment term; right? It's set forth right
25 there in section 5.8; correct?

1 A. It would allow the parties to agree
2 differently than the agreement provides, yes.

3 Q. Now, you testified about cross-defaults.
4 And what I'd like to do, with the Court's permission,
5 is hand you a hard copy of this exhibit which will be
6 easier than trying to review the whole thing
7 electronically.

8 THE COURT: You may.

9 Q. I'm handing you a hard copy of Exhibit 10.
10 And Ms. Reinhart, I'd like you to take as much time
11 as you need and point out to me where the
12 cross-default provision is contained, the
13 cross-default provision that would trigger defaults
14 in other lending agreements, either repurchase
15 lending agreements or other types of lending
16 agreements with another party.

17 A. There is a cross-default provision on page
18 38. Cross-default, cross-collateralization.

19 MR. LEE: Your Honor, may the record
20 reflect that approximately 11 minutes have elapsed?

21 THE COURT: The record will so reflect.

22 Q. (By Mr. Lee) I'm glad you noticed that,
23 Ms. Reinhart.

24 A. And there's also -- there's also some
25 provisions on page 18 that would provide that if

1 there was an act of insolvency, which is the
2 presentation of a ^winding-up of business or any
3 analogous proceeding, so in my mind that wouldn't
4 necessarily mean a bankruptcy filing, a petition for
5 bankruptcy, but could be something similar there. So
6 those were at least -- I mean, it's a long document
7 and I tried to go through it as quickly as I could,
8 but those were at least a couple of things that come
9 out, Mr. Lee.

10 And then there are other agreements that
11 the company has.

12 Q. All right. You've answered my question.

13 A. Okay. Thank you.

14 Q. I'm glad you noticed the provision on page
15 38. I don't know if you read it carefully, though,
16 because in fact, what the provision entitled
17 cross-default, cross-collateralization on page 38
18 refers to is a cross-default only with another
19 lending agreement with Citigroup, doesn't it? It
20 doesn't apply to any lending agreement with any other
21 financial institution, does it?

22 A. I don't know without actually studying this
23 in more than 11 minutes, Mr. Lee.

24 Q. The paragraph at page 38 specifically
25 refers to cross-default with an affiliate, and an

1 affiliate is defined as Citigroup global markets
2 holding and any entity controlled by it. So there
3 are no cross-default provisions that would trigger --
4 under which an event of default in this agreement
5 would trigger any default with any other agreement
6 with any other bank.

7 A. I don't know that for a fact.

8 Q. Well, would you like additional time to
9 read paragraph 38, or are you willing to accept my
10 representation that paragraph 38 is limited to other
11 agreements with Citigroup or one of its affiliates?

12 MR. KASPER: Your Honor, I object. It's
13 calling for the witness to make a legal conclusion
14 about what a contract means.

15 THE COURT: Well, if she can't take your
16 representation, I think we're going to move on.

17 A. Mr. Lee, there are other agreements that
18 the company had that were dependent upon its
19 compliance and its solvency in order for them not
20 to --

21 Q (By Mr. Lee) Ms. Reinhart, you'll have your
22 opportunity to explain. I asked you a specific
23 question, which is: Are you willing to accept my
24 representation that the paragraph on page 38 is
25 limited to agreements with other Citigroup entities.

1 So either yes or no.

2 A. No, I'm not willing to accept your
3 representation, Mr. Lee.

4 Q. But what your review of this agreement has
5 illustrated is that it would have been beneficial for
6 you to read this agreement in detail before
7 testifying broadly yesterday that there were
8 cross-default provisions under the Citigroup
9 agreement that's Exhibit 10; right? That would have
10 been better; right?

11 A. It's been certainly some time since I've
12 looked at these. But I am aware of cross-default
13 provisions within the company's legal agreements that
14 affect other lending agreements, is how I understood
15 them at the time.

16 Q. But your testimony yesterday was not about
17 other lending agreements. Your testimony yesterday
18 was about this particular agreement, Exhibit 10,
19 which you said you were familiar with and which you
20 said had a cross-default provision that would trigger
21 defaults with other lenders. That was your testimony
22 yesterday.

23 A. Well, the cross-default provision relates
24 to other agreements being triggered. So if the
25 company defaults on the Citi agreement, then the

1 other agreements that are there, other agreements
2 that the company had with Greenwich for its warehouse
3 line and for other repo agreements and for its other
4 debt agreements, contained provisions that the
5 company had to maintain certain financial ratios and
6 be in compliance with those agreements. So that's
7 the cross-default provision that I was speaking
8 about.

9 Q. All right. Well, you didn't make that
10 clear yesterday. You just testified that there was a
11 cross-default provision in Exhibit 10 that would
12 trigger defaults under other lending agreements, and
13 that's not there, is it?

14 A. Without again studying it and -- I can't
15 answer your question there, Mr. Lee.

16 Q. Now, since we were talking about
17 reservation of rights letters, you testified you
18 would have wanted to know about the reservation of
19 rights letter that Citi sent to the company on or
20 about February 21. You were aware that Thornburg had
21 received reservation of rights letters in August of
22 2007; correct?

23 A. No, I'm not. I was not aware of that fact.

24 MR. LEE: Your Honor, may I approach?

25 THE COURT: You may.

1 MR. KASPER: Can I please get a copy?

2 MR. LEE: I'm getting you a copy.

3 Q. (By Mr. Lee) I've handed you what's been
4 marked as Exhibits PG and PH. Do you see those in
5 front of you?

6 A. Yes, I do.

7 Q. And Exhibit PG is an email from a lawyer at
8 Clifford Chance to you and others. Do you see that?

9 A. Yes, I do.

10 Q. And it's transmitting an underwriting
11 agreement. Do you see that?

12 A. Yes.

13 Q. And then if you look at Exhibit PH, that is
14 a copy of the underwriting. Do you see that?

15 A. Yes.

16 Q. And in the lower right-hand corner, that
17 contains your initials; right?

18 A. It does.

19 Q. And in the upper right-hand corner, it
20 contains Tara Baucom's initials; correct?

21 A. Yes.

22 Q. And you can tell from these documents that
23 they came from KPMG's files; correct?

24 A. Yes.

25 Q. And I'd like to turn your attention to just

1 look at Exhibit PH, which is the one with your
2 initials on it, to schedule 3 L at Bates ending 4129.
3 And that is a schedule of both default notices and
4 reservation of rights notices, correct?

5 A. Yes.

6 Q. And that schedule shows that Thornburg
7 received four reservation of rights notices, a
8 reservation notice from Liquid Funding dated August
9 15, a reservation notice from Nomura dated August 14,
10 a reservation notice from NATIXIS dated August 14,
11 and a reservation notice from Citigroup dated August
12 15. Do you see that?

13 A. Yes.

14 Q. And under the notes it indicates -- there's
15 some comment about what happened and next to the
16 Liquid Funding reservation of rights notice it says,
17 "No action," and under the Nomura notice, it says,
18 "No action," and then next to the NATIXIS notice it
19 says, "Voluntarily terminated swaps." And under the
20 Citigroup it says, "No action." Do you see that?

21 A. Yes.

22 Q. And this agreement was provided to KPMG in
23 connection with its issuance of a comfort letter;
24 correct?

25 A. Yes.

1 Q. And if you could turn to page 7 of the
2 agreement which ends at 4096. Are you there?

3 A. Yes.

4 Q. Under section L. And section L reads,
5 "Except as set forth on schedule L, the line items of
6 which individually or in the aggregate do not have a
7 material adverse effect on the company, any of its
8 subsidiaries, or the manager, neither the company,
9 any of its subsidiaries nor the manager is in breach
10 of or in default of, nor has any event occurred with
11 which notice, lapse of time, or both would result in
12 a breach of or constitute a default of," and then it
13 goes on to list the various types of agreements. Do
14 you see that?

15 A. Yes.

16 Q. And would you agree with me that this
17 schedule that's referred to here is the schedule that
18 contains the listing of four reservation of rights
19 letters the company received in August?

20 A. Yes.

21 Q. And would you agree with me that the way to
22 read this is that the company is representing its
23 belief that the items listed on that schedule,
24 including the reservation of rights letters, do not,
25 either individually or together, constitute a

1 material adverse effect on the company; correct?

2 A. The reservation of rights letters?

3 Q. As set forth on the schedule, that's how
4 this language in paragraph L reads; right?

5 A. That's what the company is representing.

6 Q. Right. That each of the reservation of
7 rights letters, both together and individually, do
8 not have a material adverse effect on the company;
9 right?

10 A. That's what they're saying, yes.

11 Q. And KPMG received this in or about
12 September of 2007; correct?

13 A. Yes.

14 Q. And even though KPMG received this
15 information informing KPMG that the company had
16 received four reservation of rights letters, KPMG did
17 not require the company to disclose those reservation
18 of rights letters in its Form 10-Q, did it?

19 A. No, but the company basically disclosed the
20 events of significant amounts of liquidations of
21 securities as a result of counterparties either
22 terminating the agreements or the company voluntarily
23 selling. And so the events that would have
24 surrounded any notice of default or reservation of
25 rights, had they occurred -- that had essentially

1 happened, and that, in fact, was disclosed. So that
2 was the more, in our mind, significant event that
3 needed to be provided for.

4 Q. It was the events of default that led to
5 certain liquidations; correct?

6 A. Events of default or actions on the part of
7 the company to terminate agreements that led to the
8 liquidations of assets.

9 Q. But the lenders that issued reservation of
10 rights letters did not default the company; correct?

11 A. From this -- I can't actually tell without
12 going back to the audit work.

13 Q. Citigroup was one of the lenders.
14 Citigroup did not default the company in August of
15 2007, did it?

16 A. I don't have a recollection, Mr. Lee.

17 Q. So your rationale or explanation of why the
18 reservation of rights letters weren't important to
19 you in August isn't actually accurate, because what
20 triggered the liquidations was only the actual
21 defaults, not the lenders that only issued
22 reservation of rights letters; isn't that right?

23 A. Well, what triggered the company having to
24 sell or the counterparties seizing the collateral was
25 the contraction of the commercial papers market. So

1 there was no lending vehicle under commercial paper
2 that was available. So the company essentially had
3 to scramble for new sources of liquidity to finance
4 its assets, and so that was the event that was
5 significant. That fact, plus the loss that was taken
6 was, in fact, disclosed. The reservation of rights
7 and default notices -- that was, in our mind, no
8 longer relevant for the third-quarter disclosure.

9 Q. And one of the reasons it was no longer
10 relevant was that the reservation of rights letters
11 from those lenders never actually resulted in any
12 default; correct?

13 A. Right. Effectively, the refinancing
14 activities and the events that occurred -- it was
15 done by the time the company had to file its Form
16 10-Q.

17 Q. And KPMG never asked Thornburg for copies
18 of the four reservation of rights letters, even after
19 seeing the existence of those letters on this
20 schedule. KPMG never went back to Thornburg and
21 asked for copies of those letters, did it?

22 A. I don't know if anybody did.

23 Q. And KPMG did not request that the company
24 provide reservation of rights letters in connection
25 with the 2007 audit, even though it knew about the

1 existence of four reservation of rights letters in
2 August, did it?

3 A. I don't have a recollection, Mr. Lee.

4 Q. You testified about a down-to-date meeting
5 that occurred on or about February 27. Do you recall
6 that?

7 A. Yes, I do.

8 Q. And you testified that at that meeting, Mr.
9 Simmons said that the likelihood of collateral values
10 decreasing by more than 2 to 3 percent was remote.
11 Do you recall that?

12 A. Yes.

13 Q. And you remember that from the meeting on
14 February 27?

15 A. Yes, on or about the 27th, yes.

16 Q. And then let's go to Exhibit 249, please.
17 Exhibit 249 is KPMG's final going concern memo. Do
18 you see that?

19 A. Yes.

20 Q. And you testified that in this going
21 concern memo you were reporting what Mr. Simmons had
22 told you and Ms. Hall during the down-to-date meeting
23 about the likelihood of collateral values declining.
24 Do you recall that line of questions?

25 A. Yes.

1 Q. And if we can go to the relevant sentence,
2 it's our Exhibit AS. And you see at the top it says,
3 "It is management's position that the likelihood that
4 collateral values decrease by more than another 2 to
5 3 percent is remote." Do you see that?

6 A. Yes.

7 Q. And you testified that that was reporting
8 what Mr. Simmons had told you in the down-to-date
9 meeting, which occurred on or about the 27th; is that
10 right?

11 A. Yes.

12 Q. Let's take a look at Defendants' Exhibit
13 OO. Exhibit OO is a draft of the going concern memo.
14 Do you see that?

15 A. Yes.

16 Q. And if we can just scroll down to the end
17 of the area where the comments are inserted. Okay.
18 So you can see that these are a number of comments
19 that have been inserted by members of KPMG. Do you
20 see that?

21 A. Yes.

22 Q. And you can see they're inserted if we --
23 go to the Bates ending 826. Actually, the whole
24 page. You can see that the comments are inserted by
25 KPMG on February 22 and 23; right?

1 A. Yes.

2 Q. And now go to the Bates ending 827 at the
3 bottom. This is language that was inserted on
4 February 23, 2008. Do you see that?

5 A. Yes.

6 Q. At 9:42 a.m. Do you see that?

7 A. Yes.

8 Q. And that says, "It is management's position
9 that the likelihood that collateral values decrease
10 by more than another 2 to 3 percent is remote." Do
11 you see that?

12 A. Yes.

13 Q. That was inserted into the going concern
14 memo four days before the down-to-date meeting where
15 Mr. Simmons supposedly told you this information;
16 right?

17 A. It was inserted on that date, but he also
18 told us that same information at the down-to-date
19 meeting. I remember it specifically.

20 Q. But you didn't testify yesterday -- you
21 didn't make clear that it had originally come from --
22 are you saying it originally came from another
23 source?

24 A. I didn't say that. I just simply said I
25 remembered him saying that at the down-to-date

1 meeting.

2 Q. And would you agree that the actual draft
3 of the going concern memo -- well, back up for a
4 second. You testified you remembered him saying
5 that; right?

6 A. Yes.

7 Q. On or about February 27?

8 A. Yes.

9 Q. And you testified that that was what you
10 were reporting in the going concern memo; right?

11 A. Yes.

12 Q. But what the draft of the going concern
13 memo actually shows is that that statement was put
14 into the memo four days, four days, before this
15 down-to-date meeting that you've testified about,
16 doesn't it?

17 A. It does.

18 Q. And you didn't take any notes at this
19 meeting?

20 A. I don't recall that I did, no.

21 Q. And Ms. Hall didn't take any notes during
22 this down-to-date meeting, did she?

23 A. I don't know. You'd have to ask her that
24 question.

25 Q. You've never seen any notes prepared by

1 either you or Ms. Hall of the down-to-date meeting,
2 have you?

3 A. I have not, that I remember, no.

4 Q. So you didn't actually write down any of
5 the statements that were supposedly made during that
6 meeting; correct?

7 A. I had in front of me the representation
8 letter, I had a checklist in front of me. And so
9 that served as the way that mentally I documented the
10 questions that were being asked and the responses
11 that I was getting back. This one sticks out in my
12 mind specifically because of the conversation that we
13 were having about the company's margin calls, its
14 liquidity, its going concern assessment, its OTTI
15 assertions, and this one was important to us to get
16 management's view of its collateral in the
17 marketplace at that particular point in time.

18 Q. And the checklist that you referred to --
19 that contained or was a guide only to your questions
20 that you were going to ask during the down-to-date
21 meeting; correct?

22 A. That's right.

23 Q. So there is absolutely no written record of
24 what actually was said by anybody in the meeting;
25 correct?

1 A. This is the written record that reflects --
2 the final memo reflects what was -- partially what
3 was said, as well as everything else. If there was
4 something that refuted the information that we had
5 accumulated up to that point, we would have made note
6 of it. But at that meeting the company and Mr.
7 Simmons specifically was asserting to us that all of
8 the information that we had and that the company
9 provided to us was accurate for our consideration.

10 Q. And approximately how long was this
11 meeting?

12 A. I don't remember.

13 Q. Do you have a ballpark?

14 A. No, I don't.

15 Q. No idea how long this meeting was?

16 A. I don't.

17 Q. Five minutes, an hour, two hours?

18 A. More than five minutes.

19 Q. And it wasn't important enough to you as to
20 what Mr. Simmons or Ms. Starrett said to actually
21 take notes or to have any written record at the time
22 of what they said, was it?

23 A. If I thought it was important, I thought
24 what I accumulated in my head and what was
25 communicated and documented in our final memoranda

1 was sufficient.

2 Q. Now, after the meeting ended, you didn't go
3 and write down notes to yourself, either, did you?

4 A. No. We were finalizing all of the
5 memoranda to the file, and so it wasn't necessary for
6 us to have a long list of notes that needed to be
7 accumulated to be recorded later on, because we were
8 at the end, essentially, of the audit.

9 Q. And so eight years later you can't even
10 give me a ballpark estimate of how long this meeting
11 was, but you can remember one specific statement from
12 that meeting.

13 A. That's right.

14 Q. Even though the specific statement that you
15 attributed to Mr. Simmons as having been recorded in
16 the going concern memo was actually inserted into the
17 going concern memo four days beforehand.

18 A. That statement is crystalized in my memory.

19 Q. Ms. Reinhart, I'd like to ask you a few
20 questions about Mr. Taylor's role in the audit.
21 Mr. Taylor, I believe you testified yesterday, was
22 the so-called in-depth review partner?

23 A. Yes.

24 Q. What does that mean?

25 A. That means that he assists the SEC

1 reviewing partner -- Mr. Womack, in this case -- in
2 reviewing the audit workpapers and discussing with
3 the engagement team those areas that are of a
4 technical nature within his area of expertise, which
5 was mortgage banking.

6 Q. And so he was part of the team at least in
7 part because he had particular or specialized
8 experience with the accounting issues surrounding
9 mortgage companies? Is that fair to say?

10 A. That's fair.

11 Q. And Mr. Taylor was part of the original
12 proposal to Thornburg when KPMG was essentially
13 pitching for the business; right?

14 A. Yes.

15 Q. If we can go to Exhibit AW, please, the
16 second page or the third page. So this is a draft of
17 the Thornburg going concern memo. Do you see that?

18 A. Yes.

19 Q. Now, if we can go back to the first page.
20 So Mr. Taylor is forwarding to you and Ms. Hall his
21 comments on a draft of the going concern memo;
22 correct?

23 A. Yes.

24 Q. And it's on February 20, 2008; right?

25 A. Yes.

1 Q. And he says, "Here are my notes."

2 A. Yes.

3 Q. And if we can go to Bates ending 925, you
4 can see just generally that Mr. Taylor is putting in
5 handwritten comments on the memo; right?

6 A. Yes.

7 Q. And let's blow up this particular comment
8 that's highlighted where it says, "The company has
9 made all margin calls to date," and he writes, "Any
10 chance they won't?" And then writes, "Projection or
11 forecast"; right?

12 A. Yes.

13 Q. And he was specifically calling out the
14 possibility that Thornburg might not be able to pay
15 its margin calls; right?

16 A. He's -- that's right. He is. He's calling
17 that out, as well as asking if there is -- are they
18 able to project or forecast.

19 Q. And his comment -- you took his comments to
20 be comments that he wanted you and/or other members
21 of the engagement team to pay attention to. Fair to
22 say?

23 A. He wanted to discuss these with him, and
24 so, in fact, we did.

25 Q. And now let's go to page 930. The first

1 sentence of the first full paragraph reads, "As the
2 company has the ability and intent to hold its
3 purchased ARM assets until recovery, losses are not
4 considered to be other than temporary impairments."
5 Do you see that?

6 A. Yes.

7 Q. And that sentence relates to the
8 intent-and-ability component of OTTI; correct?

9 A. Yes.

10 Q. And so Mr. Taylor was reviewing that
11 portion of the company's analysis; right?

12 A. Yes.

13 Q. And he wrote, "What about the \$22 billion
14 sold." Do you see that?

15 A. Yes.

16 Q. And you understood that to be a reference
17 to the \$22 billion in assets that had been sold in
18 August of 2007; right?

19 A. Yes.

20 Q. And you understood Mr. Taylor to be raising
21 a specific question of whether that large an amount
22 of sale of assets in August would call into question
23 the ability and intent to hold in February; correct?

24 A. Yes.

25 Q. And so he was aware of and pointing out the

1 experience that the company had gone through in
2 August; correct?

3 A. Yes.

4 Q. Including the sale of assets; right?

5 A. Yes.

6 Q. And was asking the question, would that --
7 essentially, would that have any impact upon the
8 company's OTTI analysis for purposes of the Form
9 10-K; correct?

10 A. Yes.

11 Q. And in fact, the sale of assets, I think
12 we've already talked about, actually triggered what
13 was at least triggered in part by certain defaults;
14 correct?

15 A. Yes. The sale of assets was triggered by
16 defaults, as well as the unavailability of commercial
17 paper as a vehicle to finance those assets at that
18 time.

19 Q. Right. Right. And Mr. Taylor presumably
20 knew that in the third quarter, in August of 2007,
21 during the company's third quarter, even though there
22 had been \$22 billion in assets sold, the company did
23 not take an OTTI; correct?

24 A. Well, the company recorded realized losses
25 on those assets that were sold and then they were

1 able to successfully refinance the remaining assets
2 under repurchase agreement arrangements that were
3 determined to be such that they would be able to hold
4 those assets through recovery or maturity.

5 Q. And you consulted with Mr. Taylor on the
6 company's OTTI decision in February of 2008; correct?

7 A. He was one of the several partners that I
8 consulted with, yes.

9 Q. And did you also consult with him on the
10 decision or on the company's position not to take an
11 OTTI in the third quarter of 2007?

12 A. On the remaining assets that were -- the
13 company continued forward with, we talked about that
14 as being at least a reasonable approach, yes.

15 Q. Now, we've talked a little about the
16 concept of subsequent events; right?

17 A. Yes.

18 Q. Or at least counsel for the SEC asked you
19 some questions about subsequent events; right?

20 A. Yes.

21 Q. And just without delving too much into the
22 details, there are essentially -- subsequent events
23 refer to events that occur between the end of the
24 reporting period and the time the company's financial
25 statements are actually filed; correct?

1 A. Yes.

2 Q. So the subsequent events period in this
3 case was from January 1, 2008, to February 27, 2008;
4 right?

5 A. Yes.

6 Q. And there are essentially two types of
7 subsequent events, what's known by auditors as Type I
8 and Type II; right?

9 A. Yes.

10 Q. And Type I describes an event that relates
11 to a condition that was in existence at year end, so
12 in this case a condition that was in existence at
13 December 31, 2007; right?

14 A. Yes.

15 Q. And a Type II event relates to an event
16 that is not related to an event, to a condition that
17 was in existence at year end; correct?

18 A. Yes.

19 Q. And in this case in the original Form 10-K,
20 Thornburg reported that the events that -- the
21 decline in Alt-A values and the resulting margin
22 calls that resulted in mid-February were Type II
23 events in your original Form 10-K; correct?

24 A. In the original Form 10-K, yes.

25 Q. And in the original Form 10-K, KPMG

1 concurred with the determination that those events --
2 that the decline in the value of the Alt-A and the
3 resulting margin calls -- were Type II events;
4 correct?

5 A. Yes.

6 Q. And that's why there was a subsequent
7 events disclosure, because they had been treated as
8 Type II events; right?

9 A. Yes.

10 Q. Now, I'd like to turn to Exhibit HJ.
11 Exhibit HJ is an email from Mr. Taylor to Mr. Womack,
12 cc'ing you and Ms. Hall; right?

13 A. Yes.

14 Q. And it's sent early in the morning right
15 after the 10-K has been filed; right?

16 A. Yes.

17 Q. And he writes in the first sentence, "The
18 team sent me the updated completion memo and the
19 changes to the Form 10-K, and I have reviewed them."
20 Do you see that?

21 A. Yes.

22 Q. And the completion memo is essentially a
23 memo that KPMG puts in its workpapers to record the
24 fact that it has completed all the various steps and
25 audit procedures that KPMG has conducted before

1 issuing its audit opinion; right?

2 A. It's a summary of significant audit
3 procedures and what the results of our testwork are,
4 as well as a number of other required elements.

5 Q. And so you had sent that completion memo to
6 Mr. Taylor for his review; correct? Or somebody on
7 your team had sent it to him for his review; right?

8 A. Yes.

9 Q. And there -- it sounds like from this email
10 there were changes to the Form 10-K that he had been
11 asked to review, as well; right?

12 A. Yes.

13 Q. And even though he's responded after the
14 10-K was actually filed, you would assume that he did
15 his review before the Form 10-K was filed and before
16 the audit opinion was issued?

17 A. Yes.

18 Q. So he may have just been a little late in
19 responding to the team; right?

20 A. Yes.

21 Q. And then he goes on to say, "I think the
22 disclosure is adequate, and I understand the margin
23 calls and recent liquidity squeeze was considered in
24 the going concern analysis." Do you see that?

25 A. Yes.

1 Q. And then he writes, "The drop in value in
2 February does not seem to call into question the
3 12/31/07 valuation on these assets." Do you see
4 that?

5 A. Yes.

6 Q. And so that tells you, since you were the
7 recipient of this email, that tells you that Mr.
8 Taylor was aware of the margin calls the company had
9 received in February; right?

10 A. He was aware, as we were, of the margin
11 calls in the two-week period that were disclosed in
12 the subsequent event footnote, the \$300 approximate
13 million that was received on the Alt-A collateral.

14 Q. And he was aware of something that he
15 characterized, anyway, as a, quote, recent liquidity
16 squeeze; correct?

17 A. Yes.

18 Q. And he was acknowledging that those facts
19 had actually been considered in KPMG's going concern
20 analysis; right?

21 A. That's right.

22 Q. And he concurred in the conclusion of the
23 engagement team that, in fact, Thornburg could
24 continue and would continue as a going concern;
25 right?

1 A. He concluded, as we did, that there was not
2 substantial doubt, is how auditors refer to that
3 assertion.

4 Q. Okay. And he also -- the last sentence
5 refers to his concurrence in the view that the
6 decline in the value of Alt-A securities in
7 mid-February was a Type II event; correct?

8 A. He didn't put it in that term, whether it's
9 Type I or Type II, but he clearly didn't think that
10 that would need to be pushed back to the 12/31/07
11 financial statements.

12 Q. And in fact, if he had concluded that it
13 was a Type I event, it would have had to have been
14 pushed back; right?

15 A. Well --

16 Q. Let me rephrase that. If KPMG had
17 concluded that what Mr. Taylor was writing here, that
18 the decline in value in February was a Type I event,
19 it would have had to have been pushed back to the
20 12/31 reporting; correct?

21 A. The decline in value, in and of itself,
22 wouldn't require it to be pushed back. It was all
23 about the company's liquidity associated with those
24 securities. So if we determined that the company
25 didn't have sufficient liquidity to hold those

1 securities, then the decline in value would be pushed
2 through the company's income statement at 12/31 of
3 '07.

4 Q. And what Mr. Taylor is referring to here is
5 specifically the drop in value in February, so that
6 sentence doesn't say "liquidity." The sentence says
7 "drop in value in February," and you understand him
8 to be referring to the drop in value of the company's
9 Alt-A securities; right?

10 A. I don't see anything about the Alt-A
11 securities specifically there.

12 Q. But you recall that it was the Alt-A
13 securities or at least it was concentrated in the
14 Alt-A securities; the decline in mid-February was
15 concentrated in the company's Alt-A securities. You
16 were aware of that; correct?

17 A. The margin calls of \$300 approximate
18 million were focused, as the company told us, around
19 the Alt-A collateral that they had.

20 Q. Right. And so Mr. Taylor is concluding
21 that -- however you want to define the relevant
22 securities, the drop in value, he's referring to
23 securities; right?

24 A. Yes.

25 Q. The drop in value -- the effect of what

1 he's concluding is that the drop in value was a Type
2 II event; correct?

3 A. Yes.

4 Q. Now, you were asked by the SEC yesterday to
5 speculate about the meaning of a couple of emails
6 relating to a rumored or impending collapse of an
7 unnamed European hedge fund. Do you recall that?

8 A. I recall the line of questioning about the
9 European hedge fund, yes.

10 Q. And specifically you were asked about two
11 emails that you were not on; correct? You weren't on
12 those emails; right?

13 A. I don't believe I was copied on those
14 emails, no.

15 Q. And you testified that that information,
16 the emails themselves, the fact that members of
17 Thornburg management had heard of an impending
18 collapse of an unnamed European hedge fund was
19 information you would have wanted to know?

20 A. Yes.

21 Q. And you testified that that would have been
22 important for you to know; correct?

23 A. Yes.

24 Q. Are you aware that the SEC itself didn't
25 even hear of this rumor until February 28?

1 A. I don't know when the SEC heard about it.

2 Q. Let's go to Exhibit HB. Exhibit HB is an
3 internal email from the SEC. And you can tell from
4 the top -- although not all the addressees have the
5 email address reproduced -- the very top email does
6 show that they're @SEC.GOV addresses; right?

7 A. Yes.

8 Q. So let's go to the bottom email, the first
9 email chronologically. And you know that among other
10 things, SEC has regulatory authority over
11 accountants; right?

12 A. Yes.

13 Q. But you know that the SEC also has
14 regulatory authority over all market participants,
15 such as investment banks; right?

16 A. Yes.

17 Q. And you know that the SEC also has
18 authority over our stock exchanges; correct?

19 A. Yes.

20 Q. And you know that the SEC has an entire
21 division called the Division of Trading and Markets;
22 correct?

23 A. I don't know if I have specific
24 recollection of that one.

25 Q. But you know that in general the SEC is --

1 one of their missions is to regulate our securities
2 markets; correct?

3 A. Right, regulate and protect investors,
4 right.

5 Q. And so this first email in the chain is an
6 email from Matthew Eichner at the SEC dated Thursday
7 February 28 at 8:53 a.m.; right?

8 A. Yes.

9 Q. So the next day after the emails that the
10 SEC asked you about. And it reads, "Craig" -- the
11 subject is "Heads up from Craig," and it reads,
12 "Craig left me a message this morning saying that
13 there is a fairly large hedge fund heavy into
14 mortgages that is liquidating. GS has collateral and
15 thinks they'll be covered, although he caveated that
16 view with a comment that if the word gets out, that
17 could hurt. He said that he'll give us an update
18 later if there is any news. He asked us to be
19 circumspect as it's not in the press. The name
20 sounded like Peloton, although I couldn't hear very
21 well, and I wouldn't want to get that too wrong." Do
22 you see that?

23 A. Yes.

24 Q. And Mr. Eichner is reporting a conversation
25 that he had with an individual named Craig Broderick.

1 Do you know who Craig Broderick is?

2 A. No.

3 MR. KASPER: Objection, Your Honor. There
4 is no foundation that this witness knows anything
5 about internal SEC emails.

6 THE COURT: You can ask your question, but
7 you have to be careful that you do lay a foundation
8 for particular questions.

9 Q. (By Mr. Lee) Okay. Do you see that this
10 email appears to reflect that Mr. Eichner at the SEC
11 is learning on February 28 in the morning, 8:53 in
12 the morning, about a fairly large hedge fund that is
13 liquidating where the name sounded like Peloton but
14 he's not sure?

15 A. Yes, that's what I read.

16 Q. And he's -- would you agree that he is
17 expressing some caution about knowing for sure what
18 that hedge fund is, because he says in the last
19 sentence, "I wouldn't want to get that too wrong."
20 Do you see that?

21 A. That's what it says.

22 Q. And you see that he's reporting a
23 conversation with somebody named Craig, that he'll
24 give us an update later if there is any news, and he
25 asks us to be circumspect, as it's not yet in the

1 press. Do you see that?

2 A. Yes.

3 Q. And then if we go to the email above,
4 Mr. Eichner is forwarding this news to other
5 colleagues of his at the SEC. Do you see that?

6 A. I think Mr. Eichner is not forwarding it.
7 He's receiving it, if I'm reading that right.

8 Q. You're right. You're right. I stand
9 corrected. This is a continuation of the chain.
10 Sometimes the way these emails are produced, it's not
11 entirely sequential.

12 A. Right.

13 Q. But it's a continuation of the same chain?

14 A. Yes.

15 Q. And it's a chain among various folks at the
16 SEC; correct?

17 A. I would presume so. I don't know if
18 Mr. Hsu is an SEC person or not.

19 Q. And this is just a few minutes later, also
20 the same subject, "Heads up from Craig," and Mr. Hsu
21 writes, "Ouch. Peloton has been on the top ten
22 exposure list for a while. The theory, if I remember
23 right, was that they were doing a long/short strategy
24 with the long leg at Goldman and the short leg
25 elsewhere. Goldman was making big margin calls on

1 them for several months in a row, and they had always
2 met them, giving CRMA comfort that they were indeed
3 making it on the other side. It looks like that
4 might have been a false conclusion." Do you see
5 that?

6 A. Yes.

7 Q. And would you understand that Goldman there
8 refers to Goldman Sachs, the investment bank?

9 A. I'm assuming so. I don't know which part of
10 Goldman would be involved in that transaction.
11 They've got lots of entities.

12 Q. And now let's go to Exhibit HC. Let's just
13 start at the bottom email. Do you see the bottom
14 email is the same email we looked at on the prior
15 exhibit; right?

16 A. Yes.

17 Q. And the top email from Michael, another
18 email from Michael Hsu to the same folks with the
19 same subject line, so it appears to be a continuation
20 of the same chain; correct?

21 A. It does.

22 Q. And in this email, this is a few minutes
23 later, 9:00 a.m. on the 28th. He writes -- he
24 writes -- there is some technical language about
25 relating to the Peloton fund and the amount of

1 collateral, and then he writes, "Not sure how that
2 makes sense. Something's not right." Do you see
3 that?

4 A. Let me read that there. Yes, I see that.

5 Q. Fair to say that 24 hours after the first
6 email that the SEC asked you yesterday in which
7 members of Thornburg management learned about the
8 rumored collapse, 24 hours later the SEC itself, the
9 primary regulator of our financial markets, still
10 hadn't figured out what was going on.

11 A. I don't -- they were -- it appears that
12 they weren't aware until the following morning.

13 Q. Now let's go to Exhibit HD. Let start at
14 the bottom email. Well, actually, let's take a quick
15 look at the top email. In the top email you can tell
16 there that the Michael Hsu is an SEC employee;
17 correct, HSUM@SEC.GOV?

18 A. Yes.

19 Q. Let's go to the bottom e-mail. You would
20 agree that the bottom email is an internal email
21 among SEC employees, because each of their domain and
22 addresses are contained in the top email; right?

23 A. Yes.

24 Q. Let's go to the bottom email. This is
25 another continuation of the same chain re: "Heads up

1 from Craig," in the morning of February 28th, and
2 Ms. Bettinger writes, "Actually, Jeff mentioned
3 something about a large fund in mortgages having
4 difficulties, as well. I think LB might be their PB.
5 So far, they are meeting calls. I would question
6 whether it is Peloton, which is up over 100 percent
7 for the year.

8 So would you agree with me that
9 Ms. Bettinger there is not willing to accept that
10 whatever it is they're hearing about this collapsing
11 hedge fund may not actually be Peloton; right?

12 MR. KASPER: Objection, Your Honor. I'm
13 renewing my foundation objection. She can't possibly
14 know what Ms. Bettinger thought.

15 THE COURT: Why don't you ask if she knows,
16 first. Even after reading it, does she know? If she
17 says no, let's move on.

18 Q. (By Mr. Lee) Do you know -- well, let me
19 rephrase my question. Well, I'll just move on to the
20 top email. The top email from another internal SEC
21 email, continuation of the same chain, says, "I agree
22 on treading carefully. Hopefully I caveated my email
23 sufficiently. I listened to Craig's V mail," voice
24 mail, "several times trying to decipher the name."
25 Do you see that?

1 A. Yes.

2 Q. That tells you that the SEC, our primary
3 financial markets regulator, is trying to be careful
4 before reacting to the information they heard about a
5 hedge fund that might or might not be named Peloton;
6 correct?

7 MR. KASPER: Objection again, Your Honor.
8 He's again asking her about an email that she's never
9 seen before, about people she's never met.

10 MR. LEE: Your Honor, that's what the SEC's
11 entire examination was yesterday, asking her about
12 emails that she's not on.

13 THE COURT: Well, but I think this is
14 qualitatively different. Ask her first if she can
15 answer the question.

16 MR. LEE: All right.

17 Q. (By Mr. Lee) Can you answer my question?

18 A. Can you please read the question now?

19 THE COURT: "That tells you that the SEC,
20 our primary financial markets regulator, is trying to
21 be careful before reacting to the information they
22 heard about a hedge fund that might or might not be
23 named Peloton; correct?"

24 A. I don't know, Mr. Lee.

25 Q. (By Mr. Lee) Let's turn to Exhibit HE.

1 Now, let's start at the -- just to help follow the
2 chain, start at the bottom of the page. The bottom
3 of the page, the "Ouch, Peloton has been on the top
4 ten exposure list for a while." We saw that email
5 already; right?

6 A. Yes.

7 Q. And then above that Ms. Bettinger responds,
8 again, part of the same chain, "Also, regardless of
9 who it is, it appears that word is already out, given
10 Jeff's comments." Do you see that?

11 A. Yes.

12 Q. And then if we go up to the next email from
13 Matthew Eichner to Lori Bettinger, another
14 continuation in the chain, this is about an hour
15 later, right, 9:42 a.m., an hour after the very first
16 email we looked at?

17 A. No.

18 Q. 55, 50 minutes after the very first email
19 we looked at?

20 A. You know, one of the things you really
21 can't tell is where these people are, whether they're
22 east coast, west coast. But I would presume it is an
23 hour later.

24 Q. Fair enough. What their time stamps says.
25 They're not reliable in this case? In any event,

1 Mr. Eichner writes, "If you want to call Craig,
2 please feel free. You can cite general rumblings,
3 plus his message to me, or we can just wait for the
4 story and name to come out, which will surely happen
5 before long."

6 And then Ms. Bettinger responds, "Maybe
7 I'll give him a call just to make sure. I can cite
8 his message to you, which cannot be construed as
9 rumor mongering since it is his information in the
10 first place." Do you see that?

11 A. Yes.

12 Q. Would you agree with me that the reasonable
13 interpretation of this email is that the SEC, our
14 nation's primary financial regulator, was exercising
15 caution about the rumor they had heard earlier that
16 morning?

17 THE COURT: Again, ask her first if she can
18 answer the question, if she has enough knowledge to
19 answer it.

20 A. I don't know, Mr. Lee.

21 Q. Yesterday you testified about some other
22 emails that you hadn't been on that you were willing
23 to surmise about the meaning of those emails. So
24 this is a yes-or-no question. Are you willing to
25 surmise about the meaning of this email?

1 A. I wouldn't characterize my testimony as
2 surmising. Those were people that I had -- during
3 the course of an audit that I had worked with, so I
4 also had a foundation to be able to make comments
5 about the meaning of emails that I read.

6 These are people that I do not know and
7 have never worked with before.

8 Q. All right. And now let's go to Exhibit HF.
9 Let's start at the bottom. This is another internal
10 email, this one to many more, and according to the
11 date stamp it's sent later that same day, 12:53 p.m.
12 to a number of other addressees. And he writes, "Hi.
13 We have heard from two CSEs today." And are you
14 familiar with the term CSE? Do you know that it
15 stands for consolidated supervised entity?

16 A. No.

17 Q. Do you know that it essentially refers to
18 the five or six investment banks?

19 A. If it's supervised, it's got be somebody
20 that's subject to FDIC or somebody like that.

21 Q. "We have heard from two CSEs today that a
22 large hedge fund active in the mortgage space has run
23 into trouble. The fund has cash positions of about
24 10 billion, with another 5 billion synthetic. They
25 made lots of money last year shorting mortgages, but

1 then this year positioned long AAAs, figuring those
2 were oversold, and short BBBs, figuring those would
3 be wiped out. But bad news over the past several
4 days caused AAAs to go down. As of two days ago, all
5 margin calls were being met. But a new round went
6 out today which will likely not be met. The fund is
7 reportedly exploring a sale of assets, a la Sowood's
8 sale to Citadel. Both CSE firms feel that they have
9 adequate collateral, assuming an orderly liquidation.
10 The name of the fund is Peloton Partners, and it is
11 run by a Goldman alum." Do you see that?

12 A. Yes.

13 Q. And you recall that yesterday I asked you
14 if, before opining on Mr. Goldstone's email to Mr.
15 Simmons about the news he had heard, if you were
16 aware that Mr. Goldstone had heard that the fund was
17 reportedly exploring a sale of its assets. Do you
18 recall that, I asked you that question?

19 A. You asked me yesterday that question?

20 Q. I asked you if you were aware -- if you had
21 been aware before you expressed an opinion on what
22 Mr. Goldstone meant, if you had been aware that that
23 same day he had heard that that fund was exploring a
24 sale of assets. Do you recall that?

25 A. I just remember from my testimony yesterday

1 that there was an email between Mr. Goldstone and I
2 think Mr. Feldman about the possibility that a hedge
3 fund in Europe was exploding. That's what I recall.
4 And that the company would receive possibly haircuts
5 further on down the road; they should be ready, as I
6 remember.

7 Q. Let's go up to the top email. The top
8 email is another internal SEC email, continuation of
9 the chain. "Hi. I just got off the phone with Craig
10 Broderick, who confirmed much of this but had some
11 detail to add." This is now 1:00 in the afternoon.
12 This is now over 24 hours after the internal emails
13 at Thornburg. "The problems are with Peloton ABS
14 Master Fund. There is also a Peloton Multistrategy
15 Fund which is not necessarily in trouble right now,
16 but will face name-related reputational issues in
17 staying viable. Craig said they had heard rumors for
18 Peloton for some time, but that they kept going back
19 to the fund, talking to the manager, et cetera, and
20 gained comfort." Do you see that?

21 A. Yes.

22 Q. And then let's go down to the last
23 sentence. The last two sentences say, "To date,
24 Peloton has met its calls at Goldman and currently
25 has \$1 billion posted with them. Craig was very

1 surprised by the speed of this and not entirely
2 pleased with how this played out, as in no one likes
3 surprises." Do you see that?

4 A. Yes.

5 Q. And this reflects to you that whoever is
6 reporting -- does this reflect to you that whoever is
7 reporting this internally at the SEC heard that day
8 that there had been rumors about Peloton, but that
9 Craig, from whatever firm he's at, had gained
10 comfort. Do you see that? Would you agree with me
11 that's a reasonable interpretation of this email?

12 A. That appears to be what it says.

13 Q. We've just looked at four or five of these
14 internal SEC emails on the 28th, the day after, the
15 day after the emails that the SEC asked you to
16 speculate about. When the SEC showed you those
17 emails, the emails from Mr. Feldman and Mr.
18 Goldstone, did the SEC tell you that the SEC itself,
19 the primary financial regulator, had not known about
20 Peloton until the following day?

21 A. I was not aware that Peloton was -- that
22 the SEC was aware of Peloton until the following day.

23 Q. And when the SEC showed you the email from
24 Mr. Feldman and Mr. Goldstone, did the SEC also tell
25 you that it, members of its staff who monitor and

1 regulate our financial markets, had expressed caution
2 about not taking any action in response to what might
3 be a rumor? Did they tell you that?

4 A. No, I'm just seeing these emails here for
5 the first time.

6 Q. And when the SEC showed you and asked you
7 to comment on the email from Mr. Feldman and Mr.
8 Goldstone, did they tell you that members of the SEC
9 staff charged with regulating our financial markets
10 had expressed uncertainty about what to make of the
11 news at all on the following day on February 28?

12 A. No.

13 Q. And when the SEC showed you the email from
14 Mr. Feldman and Mr. Goldstone and asked you to
15 comment on what you thought they meant, did they tell
16 you that members of the SEC itself, this very same
17 agency, this agency charged with regulating our
18 financial markets, had said in an email about this
19 very same news the following day we should tread
20 carefully?

21 A. Well, they asked me what I felt about the
22 Goldstone/Feldman email, was that I felt that
23 information should have been made available to me
24 before we signed our opinion. I don't have any -- I
25 was not aware of the latter part, the second part of

1 your statement to me, in terms of the SEC being
2 made -- being -- treading carefully.

3 Q. Pull up Exhibit 285, please. Exhibit 285
4 was the request that members of KPMG provided to
5 members of Thornburg. I think it was very late at
6 night or early in the morning on March 4. Do you
7 recall that?

8 A. Yes.

9 Q. And if we can go to page 2 of this
10 document. And counsel for the SEC asked you about
11 item 1-B in particular. Day-by-day correspondence
12 with counterparties during the week before filing.
13 Correspondence with counterparties for the two weeks
14 prior to filing, along with supporting evidence.
15 Where, it says not received and then management
16 indicated, there was minimal correspondence. Do you
17 recall that?

18 A. Yes.

19 Q. You don't know who among management that
20 management refers to, do you?

21 A. Not specifically, no.

22 Q. You don't know that that management refers
23 to Mr. Goldstone, Mr. Simmons, Ms. Starrett, Mr.
24 Rhoades, Mr. Fellers, any of the many people who
25 were -- Mr. Feldman, Mr. Fellers; you don't know

1 specifically who among any of those people the
2 reference to management is, do you?

3 A. No, I don't.

4 THE COURT: Mr. Lee, would this be a good
5 time to take our lunch break?

6 MR. LEE: Yes, Your Honor.

7 THE COURT: All right.

8 When you're excused for lunch, Mr. Madrid,
9 Ms. Montoya, if you would report to jury services.
10 If you'd visit them sometime during the lunch break,
11 that would be great. So if you'll do that for me.

12 All right. All right. We'll be back about
13 1:05. About an hour. Again, finish your meal.
14 We're not going to start without anybody but we'll
15 shoot for about an hour.

16 (The jury left the courtroom.)

17 THE COURT: All right. Anything we need to
18 discuss?

19 MR. McKENNA: No, thank you.

20 THE COURT: Mr. Lee?

21 MR. LEE: No.

22 THE COURT: See you in about an hour.

23 MR. BADAL: May I be excused this
24 afternoon? I have some work to do on this case.

25 MR. McKENNA: No problem.

1 MR. BADAL: Actually, they encouraged me to
2 leave.

3 THE COURT: Well, have fun. See you in an
4 hour.

5 (The lunch recess was held.)

6 THE COURT: Anything we need to discuss
7 before we bring the jury in? Mr. McKenna? Mr. Lee?

8 MR. McKENNA: No, Your Honor.

9 MR. LEE: No, Your Honor.

10 (The jury entered the courtroom.)

11 THE COURT: All right. Everyone be seated.
12 I was telling the lawyers and the parties, probably
13 all of us from New Mexico here appreciate that I got
14 a memo here that says, "Good morning. Everyone needs
15 to be aware that we're seeing bats on the 7th floor
16 balcony area this morning. We have had a few
17 instances of bats entering the building in the past
18 but they usually stay near the glass dome at the top
19 of the building. However, we had a group of bats
20 flying into the windows of the CRD's office on the
21 7th floor, and currently there is a bat hanging on
22 the balcony wall on the 7th floor."

23 So when you leave here, you might take a
24 look up this evening. It might be something you
25 don't see every day.

1 All right, Ms. Reinhart. I'll remind you
2 you're still under oath.

3 Mr. Lee, if you wish to continue your
4 cross-examination, you may do so at this time.

5 MR. LEE: Thank you, Your Honor.

6 THE COURT: Mr. Lee.

7 Q. (By Mr. Lee) Good afternoon, Ms. Reinhart.

8 A. Good afternoon, Mr. Lee.

9 Q. I'd like to draw your attention to the
10 meeting of the audit committee on -- it was actually
11 a telephone conference call on March 4, 2008, in
12 which KPMG informed Thornburg and its audit committee
13 that it would be withdrawing its audit opinion. Do
14 you have that in mind?

15 A. Yes, I do.

16 Q. And you testified a little about what
17 transpired at that meeting yesterday. Do you recall
18 that?

19 A. Yes, I do.

20 Q. And you testified generally that management
21 of the company was not happy with that decision;
22 correct?

23 A. Correct.

24 Q. And in fact, what management expressed to
25 KPMG on that call was that management believed that

1 the decision was incorrect as a matter of accounting;
2 right?

3 A. As a matter of accounting and auditing, I
4 guess, with respect to the conclusions, yes.

5 Q. And the reason -- the specific reason the
6 company expressed to KPMG for its unhappiness, as you
7 say, was that the company took the position that it
8 didn't make any sense to restate the 2007 financials,
9 because of events that had just occurred; is that
10 correct?

11 A. That's my understanding, as well.

12 Q. And in fact, the audit committee also
13 expressed disagreement with the position taken by
14 KPMG; correct?

15 A. I don't have a strong recollection about
16 the audit committee's objections, Mr. Lee.

17 Q. Do you recall that Ms. Anne-Drue Anderson
18 expressed disagreement with the necessity of
19 restating the company's 2007 financials?

20 A. I don't know if there were disagreements,
21 but there were questions, certainly, questions about
22 the rationale and conclusions that were reached, but
23 I'm not sure I could characterize it as a
24 disagreement.

25 Q. Do you recall that after the March 4

1 meeting, certain members of the audit committee had a
2 separate telephone call with certain members of KPMG
3 outside the context of the audit committee meeting to
4 express their disagreement with the decision? Do you
5 recall that happening?

6 A. I do not recall.

7 Q. And do you recall Mr. Mullin, the chairman
8 of the audit committee, expressing his disagreement
9 with the position extremely vociferously, almost
10 pounding his fist on the table? Do you recall that?

11 A. I don't remember any fist-pounding, no.

12 Q. Do you remember that the audit committee
13 itself -- not management but the audit committee
14 itself -- also took the position that it didn't make
15 sense to restate the 2007 financial statements for
16 events that had happened on February 28th and 29th?
17 Do you recall that?

18 A. There was a lot of discussion about it. I
19 don't know that there was disagreement. There was
20 certainly a lot of discussion.

21 Q. And you testified that the company believed
22 it should be a first-quarter event. Do you recall
23 that?

24 A. I do.

25 Q. And what that specifically meant was that

1 the company was taking the position that the events
2 that happened on February 28th and 29th could -- if
3 they affected the company's financial statements, the
4 financial statements that they would affect would be
5 the first-quarter financial statements for the period
6 ending March 31 of 2008. Do you recall that?

7 A. Yes.

8 Q. And do you recall that the company also
9 took the position that because, in their view, it
10 didn't make sense to restate the 2007 financials for
11 events that had occurred on February 28th and 29th,
12 that the proper treatment for those events was not
13 only to use them to adjust the March 31 financials
14 but to disclose them in the form of an 8-K instead of
15 a restatement? Do you recall that?

16 A. I do recall the first part. In other
17 words, recording the events in the March 31 Form
18 10-Q. But I don't remember the second part,
19 disclosing it in an 8-K. I don't recall that.

20 Q. So would you agree with me that what the
21 company essentially wanted to do was treat the events
22 of February 28th and 29th as what we've called Type
23 II events; correct?

24 A. Yes.

25 Q. And if a company decides that a particular

1 set of events are Type II events and, therefore,
2 don't need to affect the prior period financials, and
3 if the company decides that those events are
4 material, one way of treating those events is to
5 disclose them in a Form 8-K. Would you agree with
6 that?

7 A. Yes.

8 Q. And so when you testified that the company
9 was unhappy, and the company wanted to treat it as a
10 first-quarter event, really the issue is whether the
11 events of February 28th and 29th should affect the
12 December 31 financials or the March 31 financials; is
13 that correct?

14 A. Yes.

15 Q. So no one from the company expressed the
16 view that there should be no disclosure or
17 consideration of the February 28th and 29th events;
18 correct?

19 A. I don't recall any discussion along that
20 line.

21 Q. And no one from the audit committee
22 expressed the view that there should be no
23 consideration or disclosure of the February 28th and
24 29th events; correct?

25 A. I don't recall that, either.

1 Q. And so I want to ask you if this
2 disagreement was essentially an accounting
3 disagreement and you said, "Well, accounting and
4 auditing." The reason you modified the response is
5 that Type I and Type II is really more of an auditing
6 issue than an accounting issue. It's a technical
7 matter. Is that fair to say?

8 A. The auditing issue comes into play with
9 respect to the form of the auditor's report. So the
10 auditor's report is all about the results of
11 auditing. The accounting is about effectively the
12 treatment of the OTTI.

13 Q. Okay. But the determination of Type I and
14 Type II comes from generally accepted auditing
15 standards; right?

16 A. Yes.

17 Q. Now if we can turn to Exhibit 176, please.
18 And Exhibit 176 -- go to the second page. Exhibit
19 176 is a preparation letter that the SEC asked you
20 about yesterday, and this one is dated February 29.
21 Do you see that?

22 A. Yes.

23 Q. And do you recall that counsel asked you
24 about the accuracy of this letter? Correct?

25 A. Yes.

1 Q. And counsel noted in his questioning that
2 by February 29, the company had received a default
3 notice from JPMorgan the evening of February 28. Do
4 you recall that?

5 A. Yes.

6 Q. And the SEC, to my recollection, didn't
7 focus on the specific language of the letter. So
8 let's look at that. Because obviously, if you're
9 going to accuse somebody of saying something
10 inaccurate in a letter, you should look at the
11 specific language; right? You would agree with that
12 basic proposition, would you not?

13 A. I'm just here to read the letter and answer
14 your questions.

15 Q. So maybe we can blow up the text just a
16 little bit. So there are essentially two
17 representations, and the first is: "We affirm to the
18 best of our knowledge and belief that during the
19 period from December 31, 2007, to this date, and
20 except as set forth in the registration statement and
21 related prospectus, no events have occurred that
22 would require adjustment to the consolidated
23 financial statements as of December 31, 2007, or that
24 should be disclosed in order to keep those statements
25 from being misleading." Do you see that?

1 A. Yes.

2 Q. And then the second phrase is essentially,
3 "We affirm to the best of our knowledge and belief,"
4 et cetera, "that no information has come to our
5 attention about conditions that existed as of
6 December 31, 2007, that would have a material effect
7 on the effectiveness of internal controls over
8 financial reporting as of December 31, 2007";
9 correct?

10 A. Yes.

11 Q. And when management signed this letter,
12 management had taken the position that the events of
13 February 28th and 29th were new events that did not
14 require adjustment to the December 31 financials;
15 correct?

16 A. That was their position.

17 Q. Right. And that position, whether or not
18 KPMG eventually agreed or disagreed with it -- that
19 position that had been set out, the company's
20 position on what the proper accounting and auditing
21 was, was consistent with the representations in this
22 letter; correct?

23 A. It was consistent, but it was incorrect.

24 Q. And it was incorrect because KPMG decided
25 that the events of February 28th and 29th should

1 be -- should result in adjustment of the December 31
2 financial statements; right?

3 A. Well, the events that were known as of the
4 date of the report, not the events of the 28th and
5 29, per se. But the fact that the company was facing
6 a mortgage disruption in the marketplace and the
7 value of the company's portfolio was not as strong as
8 they certainly believed, so that is the known
9 condition that would have driven the adjustment to
10 the December 31, 2007, financial statements.

11 Q. Okay. So KPMG reached a different view on
12 the proper accounting treatment than the view that
13 had been advocated by management; correct?

14 A. Yes.

15 Q. This letter was not actually provided to
16 KPMG, was it?

17 A. No, I think it came from the SEC files,
18 perhaps. I don't know.

19 Q. Let's take a look at the Bates number on
20 the bottom. There has been testimony in this case
21 that the TMI Bates number reflects documents produced
22 by Thornburg and that the KPMG Bates number reflects
23 documents produced by KPMG. Do you accept that?

24 A. Yes.

25 Q. And this would suggest that this did not

1 even come from KPMG; correct?

2 A. The copy that we see here, perhaps not.

3 Q. And counsel for the SEC didn't point that
4 out when counsel asked you whether this letter was
5 accurate or not, did he?

6 A. No.

7 Q. Now, you were asked questions about the
8 company's filing of a Form 8-K informing investors
9 that KPMG would be withdrawing its audit opinion. Do
10 you recall that?

11 A. Yes.

12 Q. And just to sort of remind folks of the
13 context, when KPMG informed the company that it was
14 withdrawing its audit opinion and when it became
15 clear that that view was final, KPMG informed the
16 company that it needed to disclose that; correct?

17 A. Yes.

18 Q. And the form in which it needed to be
19 disclosed was on a Form 8-K; correct?

20 A. Yes.

21 Q. And an 8-K is a form which public companies
22 use to report the occurrence of significant corporate
23 events; correct?

24 A. Yes.

25 Q. So an 8-K, just as one example, might be

1 used to report a significant merger or acquisition;
2 right?

3 A. Yes.

4 Q. And 8-K, just as another example, might be
5 used to report a resignation of a member of the board
6 of directors; correct?

7 A. Yes.

8 Q. And one of the circumstances required to be
9 disclosed on a Form 8-K is an auditor's notification
10 that it's withdrawing its audit opinion; correct?

11 A. Yes.

12 Q. And on March 4, KPMG informed the company
13 that it was withdrawing its audit opinion; correct?

14 A. Yes.

15 Q. And on March 7 the company filed a Form
16 8-K; correct?

17 A. Yes.

18 Q. And you characterized that period of three
19 days as a delay. Do you recall that?

20 A. Yes.

21 Q. And counsel for the SEC asked you a number
22 of questions designed to illustrate that it was a
23 delay. Do you recall those questions?

24 A. Yes.

25 Q. And he made a big deal out of it. He asked

1 you questions if investors were relying on inaccurate
2 information on March 5 and on March 6 and March 7.
3 So he tries to sort of, you know, make a big deal out
4 of the fact that there had been a three-day delay.
5 Do you recall that?

6 A. Yes, but irrespective of that, our internal
7 discussions within the firm, we thought it was a big
8 deal to delay, to have the withdrawal notice not
9 filed immediately. Internally, I had a number of
10 conversations with senior partners of the firm as to
11 why there was a delay in getting that 8-K out there.

12 Q. And Ms. Reinhart, are you aware of the
13 SEC's own rules on the timing of a filing of a Form
14 8-K?

15 A. Yes, I am.

16 Q. And so you're aware that companies are
17 required to file a Form 8-K within how many days?

18 A. It's five.

19 Q. Or four or five days, depending on the day
20 of the week?

21 A. Um-hum.

22 Q. So the company, in filing its Form 8-K on
23 March 7, 2008, was in compliance with the SEC's own
24 rules relating to 8-Ks, was it not?

25 A. Technically it was.

1 Q. Well, not technically. The company was in
2 compliance with the SEC's own rules when it filed
3 that Form 8-K on March 7, wasn't it?

4 A. Yes.

5 Q. And you didn't think that was important to
6 explain, that was important context that the jury
7 should understand when it was characterized as a
8 delay, that actually the SEC's own rules, the rules
9 written and enforced by these folks, allowed
10 companies to take four or five days to announce that
11 information. Isn't that important context?

12 A. I was just answering the question
13 truthfully.

14 Q. And in fact, on March 3, the company filed
15 a Form 8-K reporting its inability to meet margin
16 calls and resulting event of default; correct?

17 A. Yes.

18 Q. So even before KPMG announced it was
19 withdrawing its audit opinion, the company filed on
20 its own accord a Form 8-K announcing what had
21 happened on February 28, 29; correct?

22 A. Yes.

23 Q. And let's take a look at Exhibit EG,
24 please. Exhibit EG is a Form 8-K filed by the
25 company on March 3. Do you see that?

1 A. Yes.

2 Q. And if we can go to the first page of
3 disclosure, and is there a way we can blow that up a
4 little more?

5 A. On the first page, could you go back to
6 that, the cover page?

7 Q. Sure.

8 A. Okay.

9 Q. Okay. The Form 8-K -- this is the form
10 we've been talking about; right -- filed by Thornburg
11 Mortgage on March 3; correct? If we can blow this
12 language up. Let's look at what the company actually
13 disclosed on March 3. Go to the middle of the page
14 where it says, "As of February 27" -- it says, "As of
15 February 27, 2008, we had met all margin calls,
16 including margin calls received between February 14
17 and February 27, 2008, in an amount in excess of \$300
18 million on our reverse repurchase agreements, the
19 substantial majority of which were related to the
20 decline in valuations placed on these securities.
21 However, after February 27, 2008, we saw further
22 continued deterioration in prices of mortgage
23 securities, and we have incurred additional margin
24 calls in an amount in excess of \$270 million. As a
25 result of margin calls prior to February 27, we have

1 limited available liquidity to meet these recent
2 margin calls as well as any future margin calls."

3 Then let's skip over a sentence. Well, it
4 says, "Consequently, to date, we have not met the
5 substantial majority of the most recent margin
6 calls." Then it says, "On Thursday, February 28,
7 2008, one lender delivered a notice of event of
8 default under a reverse repurchase agreement after we
9 failed to satisfy a margin call in the amount of
10 approximately \$28 million." Do you see that?

11 A. Yes.

12 Q. And so -- and March 3 was a Monday;
13 correct?

14 A. Yes.

15 Q. And so the filing of the Form 10-K was on
16 Thursday morning; correct?

17 A. Yes.

18 Q. And Thursday during the day the company
19 received a large volume of margin calls; correct?

20 A. Yes.

21 Q. And Thursday night, February 28, the
22 company received an event of default notice from
23 JPMorgan; correct?

24 A. Correct.

25 Q. And then there was Friday, the 29th, and

1 then it was the weekend; right?

2 A. Correct.

3 Q. So on March 3, two days later, just two
4 business days later, the company is notifying the
5 market of what had happened. Isn't that correct?

6 A. Yes.

7 Q. Even before KPMG informed the company of
8 the withdrawal of its audit opinion, the company went
9 ahead and informed the market of what had happened;
10 correct?

11 A. Yes. But the withdrawal of the audit
12 opinion hadn't yet occurred until the following day,
13 so one came after the other, obviously.

14 Q. And when counsel was leading you to the
15 characterization that there had been some sort of
16 delay in notifying the market of the withdrawal of
17 the audit opinion by KPMG, didn't you think it was
18 important context for the jury to know that even
19 before that two business days after the events in
20 question, the company had already informed the market
21 of what had happened? Isn't that part of the overall
22 picture that the jury should know about?

23 A. The SEC was asking me specifically about
24 the delay in the filing of the 8-K for the auditor's
25 report withdrawal, not about the notice of the 8-K on

1 the margin call.

2 Q. But you would agree this is relevant
3 context, would you not?

4 A. This is separate context of an adverse
5 event that occurred that the company needed to
6 disclose.

7 Q. And that the company disclosed early, even
8 before the four business days it's allowed to;
9 correct?

10 A. I wouldn't call it early or late, but they
11 disclosed it within the time frame that's required by
12 the SEC rules.

13 Q. And sooner than the time frame required?

14 A. Sooner than the expiration of that time
15 frame.

16 Q. All right. Take that down. Now, you
17 testified that there were consequences to withdrawing
18 your audit opinion; right?

19 A. Yes.

20 Q. You said that it would draw the attention
21 of regulators, specifically the SEC; right? Or that
22 it might draw the attention of regulators?

23 A. Yes.

24 Q. And you said that it draws unfavorable
25 attention to you individually; right?

1 A. Yes.

2 Q. And you said that there was no real benefit
3 to withdrawing the audit opinion; correct?

4 A. That's correct.

5 Q. And that the reason you decided to do it
6 was because it was, quote, the right thing to do;
7 right?

8 A. Yes.

9 Q. And you also said it became paramount to
10 get the report off the street. Do you recall that?

11 A. Yes.

12 Q. In fact, there were consequences to KPMG of
13 not withdrawing the audit opinion, aren't there?

14 A. Are you talking about in the hypothetical,
15 if we didn't withdraw the audit report?

16 Q. There are potentially costly consequences
17 to KPMG if it hadn't -- there were potentially costly
18 consequences to KPMG if it hadn't withdrawn the audit
19 opinion, weren't there?

20 A. There's always consequences when you do the
21 wrong thing.

22 Q. Well, the day after the 10-K was filed, the
23 stock price of Thornburg Mortgage dropped; correct?

24 A. I don't recall, but I think that's right.

25 Q. And you know when the stock price of a

1 company drops, one of the frequent results is that
2 shareholders file lawsuits; correct?

3 A. Yes.

4 Q. And those lawsuits -- you know that when
5 shareholders file those lawsuits, they sometimes name
6 the auditor as a defendant; correct?

7 A. Yes.

8 Q. And so KPMG wanted to withdraw its opinion
9 as quickly as possible to minimize its liability from
10 shareholder suits that might ensue from the drop in
11 stock price; isn't that right?

12 A. No, that's not right.

13 Q. And so the restatement by KPMG and the
14 decision to withdraw its audit opinion was about KPMG
15 protecting its own liability from possible lawsuits,
16 wasn't it?

17 A. No, it was not.

18 Q. And the consequences to you personally had
19 no bearing, one way or the other, on the decision
20 because that decision was made by folks at the very
21 highest levels of KPMG, wasn't it?

22 A. They participated in the decision. But I
23 was a part of that decision and I agreed with it.

24 Q. And those folks who participated in the
25 decision, the folks sitting in New York from the

1 national office who weighed in, we've heard their
2 names, a number of names of folks who weighed in on
3 that, they knew almost nothing about what had
4 actually happened at Thornburg; correct?

5 A. No, that's not true.

6 Q. They knew -- they didn't know nearly enough
7 to make an informed judgment as to whether there, in
8 fact, had been an accounting error; isn't that right?

9 A. No, that's not.

10 Q. And it had nothing to do with the facts
11 because all KPMG wanted to do is minimize its own
12 liability from possible shareholder suits following
13 the drop in stock price; isn't that right?

14 A. No, that's not right.

15 Q. And that's why KPMG made this decision two
16 business days after learning of the events, two
17 business days. That restatement decision wasn't
18 based on any analysis, was it?

19 A. It was based on an analysis, and it was the
20 right decision.

21 Q. And one of the folks who was involved was a
22 guy named Sam Ranzilla; right?

23 A. Yes, Mr. Ranzilla was involved.

24 Q. And his title at the time was head of risk
25 management; isn't that right?

1 A. I may have said that yesterday. He was
2 actually the head of our Department of Professional
3 Practice and the audit practice, I believe was his
4 title.

5 Q. And two days wasn't nearly enough for those
6 folks sitting in New York to know nearly enough about
7 the specific facts at Thornburg to make the decision,
8 was it?

9 A. It was -- there were others that were
10 involved. Mr. Foley was involved, and Mr. Foley was
11 the head of our banking practice. And in fact, Mr.
12 Foley and I and Mr. Goldstone had had conversations
13 back in the fall of 2007 when the company went back
14 through its liquidation event, when the markets
15 disrupted with respect to CP. So Mr. Foley was well
16 aware of what the company was going through.

17 Mr. Womack was involved. He was our SEC
18 reviewing partner. And Mr. McLamb was also involved
19 in those conversations, as well, and he was the
20 partner that participated in the analysis we were
21 going through with respect to the company's going
22 concern and the substantial doubt consideration under
23 the auditing standards.

24 So there were members of that group that
25 were quite familiar with what was happening at the

1 company.

2 Q. Mr. Foley -- isn't it true that the issue
3 that Mr. Foley discussed with you and Mr. Goldstone
4 in the fall of 2007 had nothing to do with margin
5 calls or reverse repurchase agreements or OTTI? He
6 was consulted on a totally different issue; isn't
7 that right?

8 A. No, that's not right. He was consulted on
9 the issues related to the company's -- the sale of
10 the securities or the -- and the termination of some
11 of the CP borrowings that the company had and how
12 that was being reflected in the Form 10-Q, as well as
13 an offering that the company was doing in that fall
14 time period.

15 Q. And so you've identified some folks who did
16 have knowledge of Thornburg. Mr. Ranzilla hadn't
17 been involved in the audit, had he?

18 A. No, he had not.

19 Q. Mr. Leva hadn't been involved in the audit,
20 had he?

21 A. I don't think Mr. Leva was consulted at
22 that time. I could be mistaken.

23 Q. Mr. Veihmeyer hadn't been involved in the
24 Thornburg audit, had he?

25 A. My recollection was that Mr. Veihmeyer was

1 not involved at that point, but he was involved a
2 little bit later on when we got into the discussion
3 as to whether or not there was a material weakness in
4 internal control.

5 Q. And whoever was involved, the folks that
6 you've testified to, you said there were folks in the
7 national office in New York, and they had all of two
8 days to make a decision about whether the accounting
9 treatment was correct.

10 A. Yes. They, together with me and Ms. Hall
11 and Mr. Womack and Mr. McLamb and Mr. Taylor, all of
12 us.

13 Q. And because the restatement wasn't based on
14 any information you now claim you didn't know, there
15 was no need for more than 48 hours of analysis, was
16 there?

17 A. No, we thought we had enough information to
18 make that call.

19 Q. The restatement decision was not based on
20 learning of the Citibank margin call; correct?

21 A. We didn't know that at the time
22 specifically, no.

23 Q. The restatement was not based, therefore,
24 on the payment of the Citi margin call over the
25 course of several days; correct?

1 A. No, not at that time, no.

2 Q. The restatement was not based on your
3 learning that certain I/O strip transactions had
4 yielded proceeds for the payment of margin calls;
5 correct?

6 A. I don't believe so, no.

7 Q. The restatement was not based on learning
8 that Mr. Goldstone and others had had a discussion on
9 February 27 about an impending collapse of a European
10 hedge fund; correct?

11 A. No, we didn't find that out until much
12 later.

13 Q. And the restatement was not based on the
14 fact that the company had received a reservation of
15 rights letter; correct?

16 A. Didn't find that out until much later.

17 Q. And in fact, it was the disclosures in the
18 Form 10-K itself that was a key trigger, combined
19 with rapidly deteriorating credit markets, that had
20 led to the company's liquidity situation. That was
21 the impetus for the restatement, wasn't it?

22 A. No, it was not.

23 Q. If we can pull up Exhibit HU. Ms.
24 Reinhart, Exhibit HU is a draft of the restatement
25 memo that was looked a lot at in this case. Do you

1 see that?

2 A. Yes.

3 Q. And if we can turn to the next page, that's
4 your handwriting on this draft; correct?

5 A. Yes.

6 Q. You've marked up this draft with your
7 comments; correct?

8 A. Yes.

9 Q. Now, let's go to the page ending 849. And
10 first let's take a look at the heading of this first
11 section. See it says "Primary cause of the error,
12 including fraud considerations." Do you see that?

13 A. Yes.

14 Q. Now let's go to the second paragraph and
15 blow that up and the handwritten note. That note
16 says, in part, "The disclosure in the 10-K filing was
17 a key trigger combined with rapidly deteriorating
18 credit markets that led to the company's liquidity
19 situation." That's your handwriting; correct?

20 A. Yes.

21 Q. And that's what you wrote at the time,
22 eight years ago; correct?

23 A. That's what I wrote at the time, eight
24 years ago.

25 Q. Before you had any incentive to testify

1 differently; correct?

2 A. I have no incentive to testify other than
3 the truth as I recall it.

4 Q. And it was those disclosures in the Form
5 10-K filing that you're referring to in your
6 handwritten note on the restatement memo that led to
7 the decline in the company's stock price; correct?

8 A. That's what we thought initially, but as
9 we -- in the next few days, in those days that
10 occurred, we determined that it was really the
11 company's -- they didn't assess the riskiness of the
12 environment in which they faced, and they misjudged
13 the owned value of their collateral and the amount of
14 cash and unpledged securities that they would need to
15 have on hand. That's what truly led to the triggers
16 for the margin calls.

17 Q. But in your draft of the restatement memo,
18 what you attributed it to at the time was that at
19 least in part the 10-K filing itself was a, quote,
20 key trigger, correct, at the time?

21 A. Initially that was our thinking, but I
22 think that thinking changed.

23 Q. And it was because at that time your view
24 was the 10-K filing was a key trigger which, in turn,
25 triggered a decline in the stock price. That's why

1 KPMG didn't need to do any further analysis of
2 whether it was appropriate to withdraw its audit
3 opinion.

4 A. No.

5 Q. Because KPMG's sole concern at that point
6 was pulling its audit opinion in order to minimize
7 potential civil liability from shareholder suits that
8 would result from the drop in stock price; correct?

9 A. No.

10 Q. Now, yesterday -- I just want to clarify
11 something. Mr. Kasper asked you if it would have
12 been more fair if we had shown you in your deposition
13 some of the documents that the SEC showed you
14 yesterday. Do you recall that?

15 A. Yes.

16 Q. And I want to address that with you,
17 because folks might not understand what the context
18 was and why a deposition was occurring in the first
19 place. All right. And your deposition was in
20 December of 2012; correct?

21 A. Yes.

22 Q. And at that time you weren't on trial;
23 right?

24 A. No, I think by that time I received the
25 letter from the SEC or my attorneys advised me that

1 the letter had come indicating that they were not
2 pursuing any actions against me.

3 Q. Right. And so the reason your deposition
4 was taken was because my clients, Mr. Goldstone and
5 Mr. Simmons, had already been sued by the SEC;
6 correct?

7 A. Yes.

8 Q. And your deposition was being taken because
9 you had been identified as a witness; correct?

10 A. Yes.

11 Q. And not only were you a witness, but as you
12 just testified or just acknowledged, by December of
13 2012 you already knew that the SEC was taking the
14 position that you would not be prosecuted; correct?

15 A. Yes.

16 Q. And if we can just show Exhibit LS, please.
17 And this is the letter that you're referring to in
18 which you were informed, directly or indirectly, that
19 you would not face enforcement action by the
20 Commission; correct?

21 A. Yes.

22 Q. And so in December of 2012, when your
23 deposition was taken, safe to say you hadn't been
24 accused of any wrongdoing at all; correct?

25 A. That's correct.

1 Q. And you understood that we took that
2 deposition in order to defend and represent Mr.
3 Goldstone and Mr. Simmons in this very lawsuit that
4 we're now on trial for, four years later. You
5 understand that; right?

6 A. Yes.

7 Q. And you understand that there were certain
8 rules governing the conduct of that deposition;
9 correct?

10 A. I'm not an attorney, so I don't know what
11 the rules are related to the conduct of depositions,
12 Mr. Lee.

13 Q. And in fact, some of the documents that Mr.
14 Kasper asked you about yesterday you had already seen
15 at the time of your deposition, right, because SEC
16 had shown them to you during your investigative
17 testimony in 2009 or '10, whenever that was?

18 A. Some of them, yes.

19 Q. And at that point you were still
20 potentially subject to enforcement action during the
21 investigation; right?

22 A. At that time being what time?

23 Q. At the time of your investigative
24 testimony; correct?

25 A. In 2009?

1 Q. Correct.

2 A. Presumably so, yes.

3 Q. So by the time December of 2012 rolls
4 around, the only reason you're being deposed is that
5 you're a witness in a case in which we are defending
6 and representing Mr. Goldstone and Mr. Simmons;
7 right?

8 A. Yes.

9 Q. And so the deposition wasn't about fairness
10 to you, was it? The deposition was about fairness
11 and ensuring that Mr. Goldstone and Mr. Simmons were
12 appropriately and fairly and vigorously represented.
13 Wasn't that the purpose of the deposition?

14 MR. KASPER: Objection, Your Honor. There
15 is no foundation that the witness knows the purpose
16 of a deposition.

17 THE COURT: If she knows, she can answer
18 the question. Overruled.

19 A. I think my role in providing answers to
20 both your questions and those of the SEC was to
21 provide my best recollection and understanding of the
22 information that was presented to me in answering
23 those questions truthfully and faithfully to the best
24 of my ability.

25 Q. (By Mr. Lee) Mr. Kasper asked you, well,

1 wouldn't it have been more fair to you if we had
2 shown you certain documents? But that's not the
3 purpose of the deposition. The purpose of the
4 deposition -- because then you were not -- you were
5 not a defendant. You were just a witness. The
6 purpose of the deposition was for us to represent our
7 clients; correct?

8 A. And I think I answered him back that I
9 couldn't comment as to fairness, but I could comment
10 about completeness, right? That would be my role in
11 this process. It's not my position to judge. That's
12 the jury's position to judge and determine fairness.

13 Q. And speaking of completeness, I think we've
14 now established and the reason my cross-examination
15 has taken so long is that it's important -- when
16 you're looking at any particular document or trying
17 to figure out what the meaning of any particular
18 document is, it's important to have a complete
19 picture, isn't it?

20 A. Yes.

21 Q. Now, on March 18 -- we've talked about that
22 some -- the audit committee of March 18, you and
23 Mr. McLamb reported that you did not have any
24 concerns about management integrity and that your
25 view was that management had not engaged in fraud;

1 correct?

2 A. That's correct.

3 Q. As of March 18, and that conclusion was
4 reiterated in a restatement memo the last date of
5 which is April 24, 2008; correct?

6 A. I don't know the date of that restatement
7 memo, but we did conclude that.

8 Q. Okay. And by March 18, by the time you
9 reported that conclusion, you were aware of the total
10 amount of margin calls, approximately \$1 billion,
11 that Thornburg had received between January 1, 2008,
12 and February 27, 2008; correct?

13 A. Yes.

14 Q. And by March 18, 2008, you were aware that
15 Thornburg had received a margin call from Citibank in
16 the amount of approximately \$196 million; correct?

17 A. Yes.

18 Q. And by March 18, when you reported your
19 conclusions to the audit committee, you were aware
20 that Thornburg had paid that Citi call over the
21 course of several days; correct?

22 A. I think Citi and maybe some others, as
23 well, is my recollection.

24 Q. And you were aware, therefore, that
25 Thornburg by March 18 -- let me rephrase that. By

1 March 18 you were aware that Thornburg had been
2 unable to pay the Citi call on the day it was
3 received; correct?

4 A. Yes.

5 Q. And by March 18, you were aware that
6 because Thornburg had been unable to pay the Citi
7 call within one day, that it was in violation at that
8 time of its repo lending agreement; correct?

9 A. Yes.

10 Q. And you were aware by March 18 that because
11 Citibank hadn't been paid in full within one day on
12 its margin call, it could have declared Thornburg in
13 default; correct?

14 A. Yes.

15 Q. By March 18, you were aware that Thornburg
16 had used the proceeds from certain interest-only
17 transactions as one source of cash to pay the margin
18 calls; correct?

19 A. Yes.

20 Q. And knowing all of that information, you
21 concluded that there were no concerns about
22 management's integrity; correct?

23 A. That's correct.

24 Q. And knowing all of that information, you
25 concluded that management had not engaged in fraud;

1 correct?

2 A. At that time, that's correct.

3 Q. Now, you testified yesterday that you
4 retired a couple of years ago?

5 A. Yes.

6 Q. And you testified that you had reached the
7 retirement age; correct?

8 A. Yes.

9 Q. You were, in fact, asked to retire early,
10 were you not?

11 A. No, I was not.

12 Q. You were not asked by the firm to retire
13 early?

14 A. No, I was not.

15 Q. You were criticized in an assessment that
16 was performed of the circumstances surrounding the
17 restatement; correct?

18 A. Criticized? I'm not sure I understand that
19 comment.

20 Q. You received the lowest possible rating on
21 an assessment that was performed of the circumstances
22 surrounding the restatement; correct?

23 A. I don't know what the rating was. I do
24 know that that was -- there was an assessment, but I
25 don't know what the rating scale is or how it's

1 determined or anything else about that, Mr. Lee.

2 Q. Let's take a look at Defendants' Exhibit
3 IO. Now, I won't go through this in great detail
4 because the jury has seen this already. But this is
5 entitled "Southwest area restatement assessment
6 form." Do you see that?

7 A. Yes.

8 Q. And it relates to the Thornburg 2007 audit;
9 correct?

10 A. Yes.

11 Q. And it refers to the date the restated
12 financials were issued, March 11, 2008, and it
13 identifies you as engagement partner, and so on. Do
14 you see that?

15 A. Yes.

16 Q. And if we look at the second page, the
17 grading scale goes from zero to 2. Do you see that?

18 A. Yes.

19 Q. And zero is the best score that an auditor
20 can receive; correct? And two is the worst score?

21 A. In terms of the grading considerations?

22 Q. In terms of the scale as it is presented
23 here, you would agree with me that zero is the best
24 and 2 is the worst?

25 A. As it's presented here at this particular

1 point in time, yes.

2 Q. And then if we can go back to the grade.
3 And are you aware that this assessment was conducted
4 by another independent partner at KPMG named James
5 Browning?

6 A. I don't have any visibility into the --
7 that Mr. Browning -- I'd not seen this form
8 previously at the time that it was prepared. So I
9 don't have any insight into who prepares it, how it's
10 prepared, who they consult with, anything like that.
11 It's prepared, the grade for -- the fact that there
12 was a restatement, there was a natural consequence to
13 that, and so -- but in terms of how it's determined,
14 I don't know.

15 Q. And this form indicates that the BUPPP/APPP
16 recommended grading for you was a 2, so the worst on
17 a scale of zero to 2; correct?

18 A. Right. All four of the participants,
19 Mr. Womack, Ms. Hall, Mr. Taylor, and myself.

20 Q. And Mr. McLamb received a slightly better
21 grade; correct?

22 A. Yes.

23 Q. And if you go to the grading rationale, it
24 says, "Grading considered that the issues involved
25 were those receiving high focus of attention by the

1 firm. The grading as it relates to engagement
2 partner, manager, and concurring reviewer considers
3 this and the information at hand and disclosed." Do
4 you see that?

5 A. Yes.

6 Q. And that would suggest that at least one of
7 the considerations was that there was information at
8 hand and disclosed available to you and other
9 members -- well, to you, Ms. Hall, and Mr. Womack;
10 correct?

11 A. Again, I don't have any visibility into
12 the -- what the -- what that relates to.

13 Q. And then if you go down, it says, "The
14 rating of McLamb," at the bottom, "considers he was
15 consulted on the going concern issue. It appears all
16 facts may not have been provided to him, and he was
17 not consulted on the accounting issue."

18 Do you see that? And would you agree with
19 me that that appears to provide the justification why
20 he only received a 1 when everyone else on the team
21 received a 2?

22 A. That's what is being written.

23 Q. And the Thornburg audit also had an impact
24 on your performance review for fiscal year 2008;
25 isn't that correct?

1 A. It did.

2 Q. If we can go to Exhibit LR. Just blow up
3 the top. This is a fiscal year performance review
4 process for Cynthia Reinhart. This is a form that
5 relates to you; correct?

6 A. Yes.

7 Q. And you have seen this form before; right?

8 A. Yes.

9 Q. And this form contains comments by those
10 who are reviewing you; correct?

11 A. Yes.

12 Q. And it also contains comments that you
13 provide in terms of your own self-assessment;
14 correct?

15 A. It does.

16 Q. And if we can go to the page ending 980 and
17 go to the second paragraph that says "Max carrier
18 year end business results comments," do you see that?

19 A. Yes.

20 Q. I'm going to skip over a couple of names
21 just so they're not in the record. But it says, "No
22 one questions Cynthia's drive and commitment to do
23 the right thing in the right way for the firm.
24 However, half restatements on entity Number 1, entity
25 number 2, and tax comments during the fiscal year

1 2007 QP process, the 2007 restatement of Thornburg's
2 financials impacts Cynthia's overall evaluation for
3 fiscal year '08. Cynthia must learn from these past
4 slips and ensure that similar results do not occur in
5 future audits." Do you see that?

6 A. Yes.

7 Q. And is this indicating that the Thornburg
8 restatement was actually the third restatement that
9 you had gone through?

10 A. It was the third. There is obviously
11 rationale behind the other two in terms of the
12 reasons for those. But since 1998 up through 2007,
13 that would be correct.

14 Q. And then if we go for the top of the next
15 page, the first line of text, this says, "The
16 Thornburg quality incident has been the only negative
17 this year. In spite of the restatement, I
18 demonstrated leadership under extremely difficult
19 circumstances." Is it fair to say that's your
20 writing there?

21 A. That's my comment, yes.

22 Q. And then the next sentence down, which is
23 someone else's comment says, "I agree that Thornburg
24 is a negative and should be learned from to avoid a
25 repeat." That was somebody else's comment; correct?

1 A. Yes.

2 Q. And then if we can go to the next page, if
3 we go to the first line entitled "Interim overall
4 performance rating comments," that says, "Very strong
5 year from a business perspective. Only negative
6 weighing against that is the Thornburg quality
7 incident." Do you see that?

8 A. Yes.

9 Q. And that was written by somebody else;
10 correct?

11 A. Yes.

12 Q. Characterizing what had happened at
13 Thornburg as a quality incident; correct?

14 A. That's correct.

15 Q. And then let's go to the year-end overall
16 performance rating comments. And these comments are
17 comments written by you as part of your own either
18 response to or self-assessment on your performance
19 for the year; correct?

20 A. Yes.

21 Q. And the first sentence says, "I've done
22 everything the firm has asked of me this past year
23 under very difficult circumstances." And I'd like
24 you to read for the jury the second sentence there.

25 A. "While the events leading to the Thornburg

1 restatement are still under review, I believe the
2 financial disaster in the marketplace that has
3 occurred in 2008 has demonstrated that financial
4 stability can erode overnight and cause extremely
5 negative consequences to companies once perceived as
6 extraordinarily strong (AIG, Citi, Wachovia, GE
7 Capital)."

8 Q. And that's exactly what happened in the
9 case of Thornburg; isn't it?

10 A. No.

11 Q. And that's why you wrote that, because you
12 were responding to a specific critique of your
13 performance on Thornburg, isn't it?

14 A. That's what I wrote at the time, but I
15 subsequently learned that was more information
16 available to management that wasn't provided to us
17 that likely would have allowed us to reach a
18 different conclusion.

19 Q. And have you changed your view that
20 financial stability can erode overnight? That has
21 nothing to do with Thornburg, does it?

22 A. I have not changed my view about that.

23 Q. Let's look at the final comment. The
24 reviewer wrote, "I encourage Cynthia to learn from
25 the issues surrounding quality and overcome those

1 issues in fiscal year '09." Do you see that?

2 A. Yes, I do.

3 MR. LEE: May I have a minute, Your Honor?

4 THE COURT: You may.

5 MR. LEE: I don't have any further
6 questions, Your Honor.

7 THE COURT: Thank you, Mr. Lee.

8 Mr. Kasper, do you have redirect of Ms.
9 Reinhart?

10 MR. KASPER: I do, Your Honor.

11 THE COURT: Mr. Kasper.

12 REDIRECT EXAMINATION

13 BY MR. KASPER:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Yesterday Mr. Lee asked you some questions
17 about Ms. Burns' testimony?

18 A. Yes.

19 Q. And suggesting that you should have
20 reviewed that testimony somehow prior to answering my
21 questions about the emails that I showed you that she
22 wrote. Do you recall that?

23 A. Yes, I do.

24 Q. Have you noticed, as you come into court,
25 that there is a sign as you come into court that

1 witnesses are not allowed in the courtroom?

2 A. Yes.

3 Q. Do you understand that as a witness in this
4 case, if you had reviewed that testimony, you would
5 have been violating the Court's order?

6 A. I don't -- my understanding is that you
7 want my best recollection, my own best recollection,
8 not somebody else's recollection. So Mr. Kasper, I'm
9 not aware of what the Court's rules are. But that's
10 what seems to me to be the right thing to do.

11 Q. Let me ask you this. If you had seen
12 Mrs. Burns' emails during the audit as opposed to
13 during this litigation, is it fair to say that then,
14 under those circumstances, you would have, in fact,
15 had a chance to ask Ms. Burns what she thought about
16 those emails?

17 A. Yes.

18 Q. And if you had seen them in that context,
19 would you have asked Ms. Burns?

20 A. Yes.

21 Q. Now, Mr. Lee also had some questions for
22 you related to the February 22 board minutes. Do you
23 recall that?

24 A. Yes.

25 Q. And I think he discussed a whole series of

1 questions to essentially establish that there was an
2 executive session where there was a discussion about
3 the Citi margin call and the plan that they were
4 coming up to deal with that. Then it was only later,
5 after that executive session, was when there was a
6 discussion about the filing of the Form 10-K. Do you
7 recall those questions?

8 A. Yes, I do.

9 Q. And do you recall that Mr. Lee specifically
10 noted that those audit committee members who are both
11 in the executive session and then were in the regular
12 meeting that you were permitted to attend -- that
13 they didn't mention anything about the Citi margin
14 call, either?

15 A. They did not.

16 Q. Let me ask you, do you know -- not having
17 been in the executive session, do you otherwise know
18 whether those audit committee members knew about the
19 reservation of rights letter that Citi had received?

20 A. I only found that out later on that they
21 were aware of the reservation of rights letter when
22 we attended the March 18 meeting.

23 Q. Mr. King, if you could please pull up
24 Plaintiff's Exhibit 81, and if we could go to the top
25 of the second page, please. This is a paragraph

1 we've seen several times now, and it says, "Mr.
2 Simmons advised the committee that the company had
3 received a large margin call from Citi. He said that
4 the company had worked out a schedule with Citi to
5 meet the requirement and anticipated fully meeting it
6 and any other liquidity requirements by the time the
7 10-K is filed."

8 Do you see any discussion there of the
9 reservations of rights letter?

10 A. No, I don't.

11 Q. Let me ask you this. Do you know if,
12 during that executive session, Mr. Simmons told the
13 members of the audit committee that KPMG had been
14 apprised of the Citi's margin call? Do you know if
15 he told them that?

16 A. No, I don't have any recollection of that.

17 Q. If he had told them that, would that
18 explain why no one on the audit committee mentioned
19 it to you?

20 A. Perhaps.

21 Q. Mr. Lee also had some questions now for you
22 related to the board update emails that Mr. Goldstone
23 began sending on February 15 to the board members.

24 A. Yes.

25 Q. I guess I want to clarify one thing that

1 maybe wasn't clear from my question yesterday. Were
2 you concerned about the fact that you weren't
3 provided those actual emails, or that the information
4 contained in those emails weren't provided to you
5 prior to the time of your audit?

6 A. It would be the information that was
7 contained in the emails. I don't think I have any
8 expectation of the company sharing the emails between
9 Mr. Goldstone and his management team and members of
10 the board, but I do have every expectation of
11 important information. It's critical to me as the
12 lead audit partner to have that information on a time
13 period that's contemporaneous with the events that
14 are occurring.

15 Q. And do you have -- being familiar with that
16 process, do you have an expectation where that
17 information would have turned up? Would it have been
18 in connection with the going concern process?

19 A. It could have been in connection with the
20 going concern process. It could have been at any
21 point during the time that the company was
22 experiencing the cash requirements that were causing
23 stress and causing a great amount of difficulty at
24 that particular point in time. So there were
25 certainly ample points in that final few weeks

1 leading up to the signing of the audit report that I
2 would have expected to have those kinds of
3 conversations.

4 Q. Now, Mr. Lee showed you one of those
5 emails. There were multiple emails; right?

6 A. Yes.

7 Q. And he showed you one that had found its
8 way into the KPMG files during the restatement; is
9 that right?

10 A. Yes.

11 Q. Did you have that document or the
12 information that was contained therein at the time of
13 the audit opinion?

14 A. The initial audit opinion, the original
15 audit, no.

16 Q. Thank you. Now, I showed you a variety of
17 other emails from Mr. Goldstone updating his board;
18 right?

19 A. Yes.

20 Q. And Mr. Lee didn't show you those; right?

21 A. No.

22 Q. And do you know if any of those documents
23 were ever provided to KPMG?

24 A. No, they were not.

25 Q. All right. Do you recall that Mr. Lee had

1 some questions for you related to the loan funding?

2 A. Yes.

3 Q. And Mr. Lee made a point that there was
4 only a single day when there was -- when Thornburg
5 didn't fund any loans; is that right?

6 A. Yes.

7 Q. Now, did you have an understanding of why
8 it was that Thornburg stopped funding loans? Or do
9 you now have that understanding?

10 A. I now have that understanding, but at the
11 time --

12 Q. What is that understanding?

13 A. That they didn't have any capacity on their
14 line with Greenwich. Greenwich was their warehouse
15 provider, and they also had repo agreements with
16 Greenwich.

17 Q. So is it fair to say they didn't have any
18 money or any ability to borrow money to enter into
19 mortgages? Is that right?

20 A. They couldn't close those loans. They
21 could take applications, they could process them, but
22 they couldn't close the loan.

23 Q. And is funding loans such as that -- is
24 that a way that Thornburg made money?

25 A. Yes.

1 Q. So if you can fish out in front of you
2 Exhibit QB, which is one of the documents that
3 Mr. Lee showed you --

4 A. Okay. I've got it.

5 Q. All right. And just hang on to that.
6 Before we go to that, I want to take a quick look at
7 Plaintiff's Exhibit 85, please. And this is one of
8 Mr. Goldstone's emails. And this one is dated
9 February 22; right?

10 A. Yes.

11 Q. And if we can go to the second page,
12 please, the third paragraph from the end, the larger
13 paragraph there. There you go. Thank you. And in
14 this paragraph can you see that Mr. Goldstone is
15 discussing the funding of loans?

16 A. Yes.

17 Q. And you can see that he says -- towards the
18 middle of that paragraph, he says, "We are able to
19 continue to fund loans on a limited basis"; right?

20 A. Yes.

21 Q. He didn't say that they weren't able to
22 fund any loans, but just they were on a limited
23 basis?

24 A. That's right.

25 Q. And then let's look at Plaintiff's Exhibit

1 95, please. This is another email from Mr. Goldstone
2 to the board and this one is dated February 25, so
3 three days later. And if we look again at the third
4 paragraph from the bottom, the one that begins,
5 "Finally." "Mr. Goldstone advised the board, finally
6 we have been funding loans at a reduced rate over the
7 past few days." Do you see that?

8 A. Yes.

9 Q. Okay. Now let's take a look back at
10 Exhibit QB that you have in front of you there. And
11 I understood from Mr. Lee's questioning that the
12 column entitled "Balance" is the column that
13 represents the new loans funded that day. Did you
14 understand that?

15 A. That's what he indicated, yes.

16 Q. And can you see that there are numerous
17 days there where Thornburg funded over \$10 million
18 worth of loans, or at least a couple of days there
19 where they funded on or about \$10 million worth of
20 loans?

21 A. Yes.

22 Q. Okay. And then there is the day, February
23 18, that Mr. Lee pointed to where they funded zero;
24 correct?

25 A. Yes.

1 Q. All right. Do you also see that there is
2 another day there, that week, February 22, February
3 21, where they funded \$532,000 in loans? Right?

4 A. That's correct.

5 Q. That's probably one home loan; correct?

6 A. Probably one jumbo.

7 Q. And then you also see that there is another
8 day that's less than \$2 million, and another day
9 that's barely \$3 million, and another day that's four
10 and a half million. Do you see that?

11 A. Yes.

12 Q. So is it fair to say that just from this
13 document, from the document that Mr. Lee selected,
14 that you can see there was at least five days where,
15 just as Mr. Goldstone described in his emails, there
16 was reduced funding of loans?

17 A. Yes.

18 Q. Okay. You can set that aside now.

19 Mr. King, if we could please pull up
20 Plaintiff's Exhibit 106, please. Also, if you could
21 fish out Exhibit QC, I'm going to ask you questions
22 about that document.

23 A. Okay.

24 Q. Now, do you recall that Mr. Lee said that
25 the language attached to Plaintiff's Exhibit 106,

1 which is the recent developments language we've
2 discussed at length -- that wouldn't be filed until
3 KPMG signed off on the audit; right?

4 A. That's correct.

5 Q. Is it also true that the 10-K could not be
6 filed, or at least with disclosures that looked
7 anything like the disclosures on Plaintiff's Exhibit
8 106, until the Citi margin call was paid?

9 A. Repeat that for me. I'm sorry, I was --

10 Q. Mr. King, if you can put up the second
11 page, the recent development language there.

12 In addition to -- the idea is that these
13 disclosures were going to find their way into the
14 Form 10-K that would be publicly filed; right?

15 A. That's right.

16 Q. And Mr. Lee's point was that you wouldn't
17 be able to file that 10-K until KPMG signed off on
18 the 10-K, until you filed your audit; correct?

19 A. Right.

20 Q. And my question was: It's also the case
21 that that 10-K couldn't be filed with disclosures
22 similar to the ones contained here until after the
23 Citi margin call had been satisfied?

24 A. That's right.

25 Q. Because this doesn't say anything that we

1 have outstanding margin calls; right?

2 A. That's correct.

3 Q. Mr. Lee made a point that you should have
4 known that this wasn't true on February 26 when you
5 received it, because you should have known that this
6 was just saying this is what will be true at the time
7 of filing; and to do that, he showed you this Exhibit
8 QC; right?

9 A. Yes.

10 Q. And he showed you that this is a draft of
11 your opinion from February 18 where you say that
12 you'd completed your audit work; right?

13 A. Yes.

14 Q. And it's an email from Meg Jones, who is
15 one of the staff lawyers that worked for you?

16 A. Staff accountants.

17 Q. Staff accountants. Sorry. And it's
18 addressed to you; right?

19 A. Yes.

20 Q. Same as the Plaintiff's Exhibit 106 was
21 addressed to Ms. Hall at KPMG?

22 A. Yes.

23 Q. Now, at the time that Meg Jones wrote this
24 email to you in which she had a draft that said, "We
25 have audited the company and consolidated balance

1 sheets," did you know that you had not yet completed
2 your audit work of Thornburg?

3 A. Yes.

4 Q. Did Ms. Jones know that you knew that you
5 hadn't completed your audit work of Thornburg?

6 A. Yes.

7 Q. By contrast, when Thornburg in Plaintiff's
8 Exhibit 106 sent you that information, you did not
9 know that the information contained in there was
10 untrue, did you?

11 A. We did not know that.

12 Q. All right. Can we take a look at
13 Plaintiff's Exhibit 58, please. And if you can call
14 up the body of -- thank you.

15 Do you recall Mr. Lee had some questions
16 about this one for you, as well?

17 A. Yes.

18 Q. Okay. Now -- and the suggestion from the
19 question was that there was -- that maybe the \$76
20 million wasn't all repo loans; is that right?

21 A. That's right.

22 Q. So my question is whether it was \$59
23 million worth of outstanding margin calls or \$76
24 million worth of outstanding margin calls, do you
25 know now that Credit Suisse received margin calls --

1 I'm sorry, that Thornburg received from Credit Suisse
2 margin calls that it couldn't pay on time?

3 A. Yes, I do.

4 Q. And did you know that at the time, February
5 20, the time of this email?

6 A. No, I did not.

7 Q. And that's information that you told us
8 yesterday you would have wanted to know?

9 A. We would have wanted to know that.

10 Q. Now, if you could fish out Exhibit QD,
11 please. This was the Bloomberg message that Mr. Lee
12 had some questions for you about that involved a
13 fellow named Eric Smith who worked at Credit Suisse
14 and another fellow named Patrick Feldman, who we've
15 heard talk about that works at Thornburg. Do you see
16 that?

17 A. Yes.

18 Q. Okay. Mr. King, if you could put up
19 Defendants' Exhibit OW which has been previously
20 admitted into evidence. As it comes up, while
21 Mr. King gets the document ready for us, I'll tell
22 you it's a declaration from a man named Anthony Blasi
23 who has testified here in court. How are we doing?
24 And as you'll see in a moment this declaration
25 indicates that Mr. Blasi is a managing director at

1 Credit Suisse.

2 If you'll go to paragraphs 3 and 4, please.

3 It further indicates during February 2008
4 he was a senior trader on the Credit Suisse's
5 repurchase agreement desk and at that time Thornburg
6 was a longstanding client of the Credit Suisse and as
7 part of his position he was involved with Credit
8 Suisse's repurchase agreement trades with Thornburg.
9 So my first question is: As between you or
10 Mr. Blasi, who do you think would be in a better
11 position as to interpret Mr. Smith and Mr. Feldman's
12 message exchange?

13 A. Mr. Blasi.

14 Q. Let's take a look at paragraph 7, which is
15 on the next page, Mr. King.

16 You'll see there that Mr. Blasi says, "I am
17 unaware of any agreement between Credit Suisse and
18 Thornburg to allow Thornburg to meet any margin calls
19 over time during February 2008. In my position, I
20 believe that I would have known if there had been
21 such an agreement." Do you see that?

22 A. Yes.

23 Q. And did Mr. Lee tell you that he did not
24 ask Mr. Blasi any questions about Exhibit QD?

25 A. No.

1 Q. Now, Mr. King, if you could call up
2 Plaintiff's Exhibit 10, please.

3 Do you recall that Mr. Lee had some
4 considerable amount of questions for you about
5 Plaintiff's Exhibit 10; right?

6 A. Yes. You won't make me read it again, will
7 you?

8 Q. Nor will I make you hunt for anything in
9 it. Now, I want to make sure that we're clear about
10 this agreement. During the term of the agreement,
11 who holds the collateral?

12 A. It's held in third-party custodian.

13 Q. Who has control over it?

14 A. It's for the benefit of the lender in this
15 case, so it would be -- Citigroup would have control
16 over it, because the security has been sold
17 effectively under these agreements.

18 Q. And having gone through it now with
19 Mr. Lee, do you agree that if Citi takes the position
20 that the market value of that collateral has
21 declined, they would be able to issue a margin call?

22 A. Yes.

23 Q. And Mr. King, if we could look at page 4,
24 briefly. You see there the definition of market
25 value that Mr. Lee was pointing you to?

1 A. Yes.

2 Q. And it says, (ii) says, "If unavailable,
3 the market value thereof as derived from the prices
4 or rates bid by reputable dealer for the relevant
5 instrument reasonably chosen in good faith by a
6 lender."

7 A. Yes.

8 Q. Who is the lender in that sentence?

9 A. That's Citi.

10 Q. Okay. And if there is a disagreement
11 between what Citi, on the one hand, thinks the market
12 value is worth and what Thornburg, on the other hand,
13 thinks the market value is worth, who wins that
14 disagreement?

15 A. Citi.

16 Q. Now, if I can draw your attention to
17 section 5.2, I believe it is, if you could just blow
18 up the first part of that, Mr. King. Thank you.

19 And you recall that Mr. Lee asked you some
20 questions about this. In particular, he noted that
21 the agreement provides, unless otherwise agreed
22 between the parties. Do you see that?

23 A. Yes.

24 Q. And do you recall Mr. Lee's questions?

25 A. Yes.

1 Q. And if you could go to section 28.3. I
2 don't believe Mr. Lee pointed you to this provision.
3 And you see that this is also a provision of that
4 agreement; correct?

5 A. Yes.

6 Q. And it provides, "No amendment in respect
7 to this agreement will be effective unless in
8 writing, including a writing evidenced by a facsimile
9 transmission and executed by each of the parties or
10 confirmed by another exchange of telexes or
11 electronic messages on an electronic messaging
12 system."

13 Now, do you have an understanding of how
14 this provision of the contract impacts the part that
15 Mr. Lee was showing you about the agreement between
16 parties?

17 A. Yes.

18 Q. And can you explain that?

19 A. Well, that there needs to be a written
20 documentation of any other agreement that would allow
21 the parties to operate outside the terms of this
22 agreement, both signed by Citi on one part and by the
23 company on the other part.

24 Q. And during the course of your audit work,
25 were you ever provided such a written document?

1 A. No.

2 Q. Let me ask you this. Even if it was
3 written or not, if there was any sort of modification
4 to the agreement, is that something that should have
5 been provided to you during the course of the audit?

6 A. Yes.

7 Q. Now, he also had some questions for you
8 about cross-defaults. Do you recall that?

9 A. Yes, I do.

10 Q. That's where he asked you to hunt for the
11 provision?

12 A. Yes.

13 Q. All right. So if we look on -- and he was
14 talking about -- he asked you to look at provisions
15 within this exhibit, Exhibit 10; right?

16 A. Yes.

17 Q. Can you explain generally what a
18 cross-default provision is?

19 A. A cross-default provision would allow
20 another lender outside of the lender that is involved
21 with the arrangement -- so in this, for example, if
22 Citi and the company have an agreement and the
23 company were to violate that agreement and have a
24 default, then Greenwich, who isn't a part of that
25 agreement, is aware of that default, could cause a

1 default in the Greenwich agreement or the Credit
2 Suisse agreement or any other agreement that would be
3 out there.

4 Q. Is it fair to say that you wouldn't have a
5 cross-default for a default of your own agreement?

6 A. No.

7 Q. Okay. Let's take a look at Plaintiff's
8 Exhibit 233. Ms. Reinhart, can you tell me if you
9 recognize this document?

10 A. Yes.

11 Q. Can you tell me what you recognize it to
12 be?

13 A. This is a workpaper from KPMG's audit files
14 that summarizes key provisions within the company's
15 debt agreements as to debt covenants.

16 Q. And Mr. King, if you could turn to the
17 handwritten note at the bottom of the second page,
18 please, looking at the starred provision it says,
19 "These agreement (sic) do have a cross-default
20 clause, which is if one defaults, they all default."
21 Can you tell me what you understand that to mean?

22 A. Can you go up and see where it's
23 asterisked.

24 Q. Sure.

25 A. Yes. So its referring to the reverse

1 repurchase agreements.

2 Q. Can you see on your screen?

3 A. Yes, I can.

4 Q. Can you explain to the jury what it refers
5 to?

6 A. So there is an asterisk beside the debt
7 instrument called reverse repurchase, and it refers
8 down to the asterisk at the bottom of the page, the
9 handwritten note that says, "These agreements have a
10 cross-default clause which, if one defaults, they all
11 default. When a default occurs, collateral is
12 liquidated."

13 So what this effectively allows is other
14 lenders to declare an event of default if they become
15 aware of another lender declaring an event of
16 default. So it's a cross-default.

17 Q. And the last exhibit I want to show you on
18 this topic is Plaintiff's Exhibit 326. Do you
19 recognize this document?

20 A. Yes, this is an 8-K filing.

21 Q. An 8-K filed by Thornburg?

22 A. Yes.

23 Q. All right. And if we can turn to the third
24 page of the agreement, please, the document, please
25 and if we could highlight the last sentence on the

1 page. That's fine, too.

2 Do you see the last sentence on the page
3 reads, "The company's receipt of the notice of an
4 event of default has triggered cross-defaults under
5 all of the company's other reverse repurchase
6 agreements and its secured loan agreements. The
7 company's obligations under those agreements are
8 material." What do you understand that to mean?

9 A. That's consistent with what I just read out
10 of the KPMG workpapers, and that is that because the
11 company has defaulted on the JPMorgan reverse
12 repurchase agreement, then the other debt agreements
13 that the company has with its repo lenders and its
14 secured lenders could be in default, as well,
15 declared in default, as well.

16 Q. Now, let me ask you to go, Mr. King, to the
17 last page.

18 If you can tell me if you agree with me
19 that this document was, in fact, signed by Mr.
20 Goldstone?

21 A. Yes. Slash S. That's what slash S slash
22 means.

23 Q. You also recall that Mr. Lee had some
24 questions for you about the down-to-date meeting?

25 A. Yes.

1 Q. And your note-taking practices at
2 down-to-date meetings?

3 A. Yes.

4 Q. Is it fair to say that you didn't take any
5 notes during that meeting because Mr. Simmons didn't
6 say anything noteworthy?

7 A. He didn't say anything that was -- I
8 wouldn't say necessarily noteworthy, but inconsistent
9 with what we had come to learn during the course of
10 the audit. So there wasn't anything that triggered
11 me to take a note, and we were very close to the end.
12 So it wasn't as if we had days and days of time that
13 needed to elapse before we memorialized the
14 conversation.

15 Q. Let me ask the question this way. If
16 Mr. Simmons had told you that the company had
17 received a reservation of rights letter from Citi,
18 would you have taken out your pen and taken some
19 notes then?

20 A. Yes.

21 Q. Now, Mr. King, if you could call up Exhibit
22 HJ, please.

23 And this is the communication involving Mr.
24 Taylor, I believe, and that Mr. Lee had some
25 questions for you about?

1 A. Yes.

2 Q. Okay. And Mr. Taylor wrote, "I think the
3 disclosure is adequate and I understand the margin
4 calls and recent liquidity squeeze was considered in
5 the going concern analysis." Is that correct? Is
6 that what you understood at that time?

7 A. Yes.

8 Q. And that's what you told me yesterday that
9 was required under the accounting rules; you consider
10 everything up until the time of the audit opinion in
11 reaching your going concern decision?

12 A. That's right.

13 Q. And then he says, "Drop in value in
14 February does not seem to call into question the
15 12/31/2007 valuation on these assets." To your
16 understanding, was there any issue about the
17 appropriate valuation of the impaired assets?

18 A. No, no question about the value.

19 Q. Can you take that one down, Mr. King.

20 Now, I want to go back to the Peloton issue
21 that Mr. Lee asked you some questions about, and I'd
22 like to call up Plaintiff's Exhibit 113, please. Do
23 you recall this is the email from Mr. Feldman to Mr.
24 Goldstone and Mr. Simmons, and this is where they
25 first make reference to learning about this

1 collapsing hedge fund. Do you recall that?

2 A. Yes.

3 Q. And do you see that they said they learned
4 it from Charles Mac. Do you know who Charles Mac is?

5 A. No.

6 Q. Do you know where he works?

7 A. I have no idea.

8 Q. Is it possible that he was somebody that
9 worked at Merrill Lynch?

10 MR. LEE: Objection, calls for speculation,
11 same objection as --

12 THE COURT: Well, it's just a yes/no
13 answer.

14 A. I don't know.

15 Q. (By Mr. Kasper) And let's take a look
16 at -- this was on February 27. Do you recall that
17 Mr. Goldstone was out of town?

18 A. Yes, I do.

19 Q. And do you recall that he was in New York
20 City meeting with bankers?

21 A. Yes.

22 Q. Let's take a look at Plaintiff's Exhibit
23 122. This was the other email that we've asked some
24 questions about related to the Peloton. And here in
25 this email he says, "Also you should note that a

1 large Alt-A hedge fund in Europe is blowing up this
2 afternoon. UBS Credit just mentioned it to me."

3 Who do you understand UBS Credit to be?

4 A. One of the companies, counterparties, UBS
5 is a significant bank in New York.

6 Q. And do you know if Mr. Goldstone had other
7 meetings with other New York banks during that time?

8 A. I believe so, but I don't know the
9 specifics.

10 Q. Is it fair to say that these emails reflect
11 Mr. Goldstone and Mr. Simmons gathering information
12 from their Wall Street connections?

13 A. Yes.

14 Q. And having been walked through the emails
15 that you've never seen before from the SEC, is it
16 fair to say that on February 27, Mr. Goldstone and
17 Mr. Simmons had better information about the
18 impending collapse of Peloton than the SEC did?

19 A. Yes.

20 Q. Mr. Lee also asked some questions about the
21 possibility that there was going to be some sort of
22 bailout of Peloton. Do you remember that? Or there
23 was going to be a buyout or some other information
24 that I hadn't presented to you about Peloton?

25 A. Yes.

1 Q. And so my question is: If that's true and
2 there becomes evidence that there was some other
3 information, is it your opinion that if Mr. Goldstone
4 learned this other information, that that means that
5 he should tell you nothing, or that he should have
6 told you about everything that he knew about Peloton?

7 A. To the extent that it has a significant
8 impact or he expects it will have an impact on their
9 book that they're financing, he needs to be telling
10 us right then and there.

11 Q. And what, in fact, did Mr. Goldstone tell
12 you about Peloton on February 27?

13 A. Nothing.

14 Q. Right. And the last topic I wanted to come
15 to was Mr. Lee asked you some questions about the
16 timing of the filing of the 8-K. Do you recall that?

17 A. Which 8-K?

18 Q. The 8-K disclosing that KPMG had withdrawn
19 its audit opinion.

20 A. Yes.

21 Q. And he asked you some questions about
22 whether the SEC rules require that information be
23 disclosed; right?

24 A. Yes.

25 Q. Do you know if there is anything in those

1 roles that would have prevented Thornburg from filing
2 the 8-K on March 4 or March 5 or March 6?

3 A. No.

4 Q. So the rules provide an outer limit but
5 don't prevent companies from making more timely
6 disclosures?

7 A. That's correct.

8 Q. And in fact, in your experience with public
9 companies, is it your experience that sometimes
10 companies do, in fact, make more -- provide that
11 information prior to the four-or-five-day deadline in
12 the SEC rules?

13 A. Yes, they do.

14 Q. And I take it from your testimony
15 previously that it was KPMG's view that this was one
16 of those cases when the better course would have been
17 for Thornburg to make the disclosure as soon as
18 possible as opposed to the last possible time allowed
19 by the rules?

20 A. That's correct.

21 MR. KASPER: That's all the questions I
22 have, Your Honor.

23 THE COURT: Mr. Kasper.

24 All right, Ms. Reinhart. You may step
25 down.

1 Is there any reason that Ms. Reinhart
2 cannot be excused from the proceedings?

3 MR. KASPER: No, Your Honor.

4 THE COURT: Mr. Lee?

5 MR. LEE: No, Your Honor.

6 THE COURT: All right. You're excused from
7 the proceedings. Thank you for your testimony.

8 All right. We're probably close enough to
9 take our first afternoon break, so why don't we go
10 ahead and do that at this time. So let's be in
11 recess for about 15 minutes.

12 All rise.

13 (The jury left the courtroom.)

14 THE COURT: All right. Anything we need to
15 discuss?

16 MR. McKENNA: No, Your Honor.

17 THE COURT: Mr. Lee?

18 MR. LEE: No, Your Honor.

19 THE COURT: All right. We'll be in recess
20 for about 15 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. Anything we need to
23 discuss, Mr. McKenna? Mr. Lee?

24 MR. LEE: No, Your Honor.

25 THE COURT: All rise.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Everyone be seated.

3 All right, does the SEC have its next

4 witness or evidence?

5 MR. BLISS: Yes, Your Honor. Securities.

6 and Exchange Commission calls Ralph Ahn.

7 THE COURT: Mr. Ahn, if you'll come up and

8 stand next to the witness box, my right, your left,

9 my courtroom deputy, Ms. Wild, will swear you in.

10 RALPH AHN,

11 after having been first duly sworn under oath,

12 was questioned, and testified as follows:

13 THE CLERK: Please be seated. State your

14 name for the record, please.

15 THE WITNESS: My name is Ralph Ahn.

16 THE COURT: Mr. Ahn, Mr. Bliss.

17 MR. BLISS: Thank you, Your Honor.

18 EXAMINATION

19 BY MR. BLISS:

20 Q. Good afternoon, Mr. Ahn. Can you tell me

21 where you live?

22 A. I currently live in Seattle, Washington.

23 Q. Thank you for traveling here, and thank you

24 for your patience today. I know it's been a long day

25 waiting to come in.

1 A. Thank you.

2 Q. What do you do for a living currently?

3 A. I am a consultant in what they call asset
4 liability management. So it's kind of assessing the
5 risk of a bank.

6 Q. What's the name of the company you work
7 for.

8 A. Azimuth.

9 Q. And who works at Azimuth?

10 A. Currently it's me and Clay. We are
11 partners. And underneath we have about five
12 employees.

13 Q. Clay as in Mr. Simmons?

14 A. Mr. Simmons, yes. I should use last names.

15 Q. What's your business relationship with Mr.
16 Simmons currently?

17 A. We're partners.

18 Q. Sorry, I know you're partners.

19 A. Yes, we're partners.

20 Q. How long have you worked with Mr. Simmons
21 at Azimuth?

22 A. I think we're approaching close to two
23 years now.

24 Q. And have you worked in Seattle the whole
25 time?

1 A. I have not.

2 Q. Where did you start?

3 A. Started in Albuquerque -- or Santa Fe, New
4 Mexico.

5 Q. And before working at Azimuth with Mr.
6 Simmons, where did you work?

7 A. Aventure.

8 Q. And what's Aventure?

9 A. That was Larry's company, and so I was
10 partnered -- well, I shouldn't say partner. I was an
11 employee of that company.

12 Q. And that's Mr. Goldstone's company?

13 A. Mr. Goldstone, I'm sorry.

14 Q. And did Mr. Simmons work for that company
15 in any way?

16 A. Yes.

17 Q. And how long did that go back, your work at
18 Aventure?

19 A. I believe that was about a year to a year
20 and a half.

21 Q. So about the past three years or so, you've
22 worked at Azimuth and Aventure?

23 A. Correct.

24 Q. Prior to that, what did you do?

25 A. Prior to that I worked at the Federal Home

1 Loan Bank of San Francisco doing similar things, just
2 not as a consulting role. I was an employee at that
3 bank.

4 Q. What about before that?

5 A. Before that was Wells Fargo, which was for
6 about nine months, doing again similar stuff.

7 Q. Also in San Francisco?

8 A. Also in San Francisco.

9 Q. What about before that?

10 A. And then before that was my Thornburg
11 experience.

12 Q. Okay. And I'm going to ask you some
13 questions about your work at Thornburg momentarily.
14 Now, you've talked about working with Mr. Goldstone
15 and Mr. Simmons after Thornburg. Are you friends
16 with Mr. Goldstone and Mr. Simmons?

17 A. Yes, I am.

18 Q. And did you have your deposition taken in
19 this case?

20 A. Yes.

21 Q. And that was in January of 2013?

22 A. Sounds about right.

23 Q. And do you remember that I took that
24 deposition?

25 A. Yes, I do.

1 Q. And that Mr. Lee then asked you some
2 questions, as well?

3 A. I do.

4 Q. And did I meet with you last night for
5 about ten minutes?

6 A. That's correct.

7 Q. And did you meet with counsel for
8 defendants after that?

9 A. I did.

10 Q. How long did you meet with them?

11 A. About the same amount of time.

12 Q. Have you met with them before?

13 A. I have.

14 Q. How many times?

15 A. Just once.

16 Q. And how long was that, and when was that?

17 A. That one was about two hours, I would say.

18 Q. And when do you think it was?

19 A. That was about two weeks ago, three weeks
20 ago.

21 Q. So how long did you work at Thornburg?

22 A. How long did I work for Thornburg? It was
23 about four years.

24 Q. And what was the time period?

25 A. 2004, right after I left college, and I

1 worked there for about another four years, about
2 2008.

3 Q. And what degree did you get in college?

4 A. Bachelor of science in finance.

5 Q. Where did you go to college?

6 A. University of Pennsylvania, Wharton School.

7 Q. So what was your job title at Thornburg, or
8 did you have multiple titles?

9 A. At the end or at the beginning?

10 Q. Let's focus on the February 2008 time
11 frame.

12 A. So at that time I believe my title was --
13 so there is two titles, so there was the senior
14 portfolio analyst, and then I was also AVP, or
15 assistant vice president, really.

16 Q. Who did you report to?

17 A. At that time it was Kyle Rhoades.

18 Q. And did Mr. Rhoades report to someone?

19 A. Yes.

20 Q. Who was that?

21 A. That was Nate Fellers.

22 Q. What about Mr. Fellers? Who did he report
23 to?

24 A. Because he was kind of the role, like,
25 treasurer of capital markets, he pretty much reported

1 to Larry and Clay.

2 Q. And when you're talking about capital
3 markets, what is capital markets?

4 A. That was the department we were working in,
5 kind of like the market facing group of the company,
6 so anything that has to do with facing outward of the
7 company with markets or -- that's pretty much --
8 capital markets.

9 Q. So what did you do exactly as part of your
10 job in January and February of 2008?

11 A. Multiple things. So primarily was kind of
12 what I've done now, consulting, which is asset
13 liability management. So it's a lot of kind of
14 preparing this one program that's called QRM. In
15 essence, you just load up the balance sheet and you
16 assess the risk -- the balance sheet. So that was
17 one part.

18 And the other part was kind of an earnings
19 model, forecasting, so forecasting how well the
20 company was going to look in terms of earnings.

21 And then the third one was during this
22 time, just assisting how I could with kind of the
23 troubles of the time, and so that included liquidity
24 reports.

25 Q. And we'll talk about the liquidity reports.

1 What do you mean by the troubles of the time?

2 A. You know, it's more a general description
3 of kind of how the markets were at that time. So I
4 don't think it's no surprise to anybody there was
5 quite a bit of distress across the entire financial
6 industry. So it was a hectic time.

7 Q. So at some point in January of 2008, did
8 you start creating the liquidity reports?

9 A. That sounds correct.

10 Q. Why did you do that?

11 A. So before that, we had kind of a mini-scare
12 in August, where we kind of -- another smaller
13 financial crisis, you could say, and realization
14 that, kind of, cash was something that we should
15 start looking into and be concerned about. And so
16 that was decided to kind of have a monitoring report
17 to just kind of see the ins and outs of cash and try
18 to do our best to project it over time.

19 Q. And when you say it was decided, who was
20 involved in that decision?

21 A. I don't think there was any one particular
22 person. I think it was one of those -- it came out
23 of ALCO as a joint effort to say we should start
24 tracking cash.

25 Q. What's ALCO?

1 A. Sorry, yes. ALCO is Asset Liability
2 Committee. It's kind of a group of all the higher
3 upper management to kind of review all things
4 important to Thornburg.

5 Q. How would you actually create the liquidity
6 reports?

7 A. Yeah, so there's a few things that can go
8 into a liquidity report that you can predict with
9 pretty good certainty. So the one that is really of
10 certainty is like interest payments on the mortgages
11 that we held. So that's contractually based, and so
12 we can figure out fairly easily. There's several
13 other things that you can kind of figure out because
14 there's contractual features, and it's just pulling
15 the data and doing the math. Some other parts, which
16 are a little less uncertain, you have to kind of keep
17 your ears out to kind of what's happening to the
18 marketplace, and pretty much do your best.

19 Q. From the time you started making those
20 liquidity reports in January 2008, did you do it on a
21 daily basis for all the weekdays?

22 A. I believe so. And there were some days
23 that we would have to do it more than once in a day
24 because of some event. But typically, yes.

25 Q. Okay. I'm going to ask you about some of

1 the liquidity reports. We won't look at every single
2 day.

3 A. Okay.

4 Q. But let's start with January 25, 2008,
5 which is Exhibit 15. Do you believe that this was
6 the first liquidity report that you created?

7 A. Oh, I don't know specifically.

8 Q. Does it sound about right that in January
9 you started creating these reports?

10 A. Yes, that sounds about right.

11 Q. Now, if you look at this dated January 25,
12 you sent the report to Mr. Goldstone, Mr. Simmons,
13 Mr. Fellers, and Mr. Stanhope; is that right?

14 A. Yes, it appears so.

15 Q. And so the beginning balance of \$225
16 million -- what does that indicate?

17 A. So that's a portion of the company's
18 liquidity, so there's various ways to define
19 liquidity. In this case, this captures two parts of
20 that which are really cash, which is the most liquid
21 form, and agencies, which is another very liquid form
22 of asset that you can pretty much readily transfer
23 into cash if you need to do.

24 Q. And when you look at the report itself, it
25 will say it's a cash liquidity report, which leads me

1 to ask, why are agencies included in a cash liquidity
2 report?

3 A. Yeah. I think it's more than I just named
4 it poorly. Cash liquidity would imply just simply
5 cash. Really, this was a -- like I said, a small
6 subset. So it really should be cash, most liquid
7 assets liquidity report. So that would be cash and
8 agencies.

9 Q. Got it. So what is an agency and what
10 makes it so liquid?

11 A. Agency is kind of considered to be like the
12 best quality of type of mortgage out there, and so as
13 a result it's kind of been vetted by how it's been
14 underwritten, so it's considered to be very pristine.
15 And as a result, it's very easy to go throughout and
16 exchange it for cash or trade it for cash, if need
17 be.

18 Q. Then on the next line it has 125 notables
19 P&I. What does P&I refer to?

20 A. P&I is principal and interest. So for
21 those who have a mortgage, you should be familiar
22 with this. You make the monthly payment and when you
23 make the monthly payment, there are two portions.
24 There is principal, which pays down the balance; and
25 then there is the interest, being allowed to borrow

1 that. So P&I is the reflection of that.

2 Q. Would that typically come into Thornburg on
3 the 25th of every month?

4 A. Yes.

5 Q. Then you have the estimated ending balance
6 there of \$290 million. What is that referring to?

7 A. So this should just be -- if I saw the
8 other portion, it should be the 225, plus whatever
9 ins and outs there are that day that causes it to end
10 up in 290. So it should be an estimated ending
11 balance.

12 Q. So let's look at the next page of this
13 exhibit and if we could expand the whole -- let's go
14 to the top left, first of all. There where it says
15 "Thornburg cash liquidity report," do you see that?
16 And again, you said it really refers more to agencies
17 and whatever the most liquid assets were?

18 A. Yes.

19 Q. Then if we could expand down, I'd like to
20 look at the bars in bold all the way across the top,
21 if you could, Mr. King. Yeah, start with those.

22 So you have several here that are listed
23 asset interest received, asset principal received,
24 repo adjustments, CMD/swap, and fundings/warehouse.
25 Are these all factors that affect Thornburg's

1 liquidity?

2 A. Yes.

3 Q. How so?

4 A. Each one of these kind of reflect either a
5 provision of cash or a requirement of cash. And so
6 it should be kind of the ins and outs that we -- for
7 cash to end up at the 290 balance.

8 Q. So it could be either cash going in or cash
9 going out?

10 A. Yes.

11 Q. Then the right-hand column, it says,
12 "Manual." What does the manual column refer to?

13 A. As I kind of mentioned, liquidity reports
14 are broken down by two things. There are some that
15 are contractual and easy to guess. And some, as I
16 said, you have to listen out to the market to assess.
17 The manual is a reflection of those, and that
18 typically would come from management or kind of what
19 the market is telling us.

20 Q. And here are the two listed possibilities
21 are equity raise, margin call, and then a third,
22 other?

23 A. Correct.

24 Q. And then what is the -- on the far right,
25 the change in cash and the cash balance?

1 A. So change in cash would be the summation of
2 all those individual parts to the left. And the cash
3 balance would just be the beginning cash balance plus
4 whatever change in cash there was for that day, which
5 ends up in the cash balance.

6 Q. If we could scroll down just a little bit
7 or expand that just a little bit so I'm understanding
8 this correctly. At the very top, you've got a number
9 of \$225,000. Is that the beginning cash that you
10 started the day with?

11 A. Yes. I think that's million. \$225
12 million.

13 Q. Sorry, you're right. It does refer to
14 million. \$225 million to start the day. Then the
15 change in cash indicates an additional \$659.7 million
16 or so; is that right?

17 A. Yes.

18 Q. So you add those up and you get the cash
19 balance projected for the end of the day; is that
20 right?

21 A. Yes.

22 Q. Excellent. Thank you. I just want to look
23 at some more of these liquidity reports if we could
24 go to Exhibit 19.

25 So at the end of January, on the 31st, a

1 liquidity report showing beginning cash of \$146
2 million; is that right?

3 A. Yes.

4 Q. And so that was down from the prior
5 liquidity report we looked at from a few days prior?

6 A. Yes.

7 Q. And you have agencies of \$45 million?

8 A. Yes.

9 Q. And then projected ending cash of \$172
10 million?

11 A. Yes.

12 Q. Then if you look at the two parts of the
13 email, there are some additional folks who were added
14 to the email list: Mr. Feldman, Ms. Starrett,
15 Mr. Buniel, Mr. Sturdy. Why did you send this email
16 or start sending the email to more people?

17 A. So the initial cut, if that really was my
18 first time, was just to make sure that it looked
19 okay. So it was only sent to those who could really
20 validate and tell me if the format needed to be
21 changed or looked good. These additional individuals
22 were interested in the information I was
23 disseminating so they would have just been included.

24 Q. Now, when you say they were interested, how
25 do you know that Mr. Goldstone and Mr. Simmons were

1 interested in this information?

2 A. Gosh, I hope they were. They were in
3 charge of the company. I mean, they asked for it. I
4 guess that's the best way to say it.

5 Q. They both asked for it?

6 A. Yeah.

7 Q. And again, just quickly, if we go to the
8 second page, the second page in the top right, if we
9 just expand the same kind of section we were looking
10 at before, this, again, shows the detail of how you
11 got to the cash balances referred to on the cover
12 email; is that right?

13 A. Yes.

14 Q. If you go to Exhibit 20, which is February
15 1st so we are going to look at two days in a row, but
16 I promise we'll skip ahead. Let me ask about this
17 one. Because you've got a line where you have an
18 asterisk next to the "Beginning cash/agency balance"
19 that says, "This is different from the \$172 million
20 predicted because there was about \$24 million in
21 margin calls by CSFB." What does that mean?

22 A. So it appears that from the time I ran it
23 the previous day, a margin call came in of \$24
24 million from CSFB. We met it, and so that reduced
25 our cash balance.

1 Q. Got it. In other words, it came in after
2 you sent out the previous day's liquidity report?

3 A. Right.

4 Q. Under today's notables it includes \$12
5 million in known margin calls. Do you see that?

6 A. Yes.

7 Q. Then a projected ending cash of \$155
8 million?

9 A. Yes.

10 Q. And if we look at the next page and expand
11 the top right, and further down, so I take it that
12 the \$12 million known margin call referred to on the
13 email ends up in the margin call column here.

14 A. Right.

15 Q. All right. Now, if we could move ahead to
16 February 13 of 2008, which is Exhibit 35. First of
17 all, just a clarification. I see that the email is
18 dated February 13, although the subject line is
19 February 12. Was this, in fact, the February 13
20 liquidity report?

21 A. Yeah, I manually update the subjects and I
22 wasn't as good of an analyst then as I am now, so...

23 Q. And we start with -- or Thornburg starts
24 with \$67 million in cash and \$2 million in agencies;
25 is that right?

1 A. Yes.

2 Q. And so again, that's lower than we've been
3 talking about in prior periods; correct?

4 A. Correct.

5 Q. And we see today's notables include margin
6 calls from Citi in the amount of \$19 million and \$30
7 million from CSFB; is that right?

8 A. Correct.

9 Q. With a projected ending cash of \$41.5
10 million. On this one -- so it looks to me like there
11 are \$49 million in margin calls. Am I reading that
12 correctly?

13 A. Correct.

14 Q. And I just wanted to clarify -- well, first
15 of all, let's look at the next line of the future
16 notables, where it says, "Tomorrow we will face about
17 \$32 and a half million in combined auction swap/swap
18 margin from CSFB." How did you know that tomorrow
19 you were going to get a swap margin call?

20 A. Swap is kind of contractual, so that one is
21 easier to predict. So that one -- I don't remember
22 the specifics nowadays, but there was a clear-cut
23 formula as to actually derive it, and there was a set
24 day when it should occur. So that's what that is.

25 Q. And as far as repo margin calls, the margin

1 calls of \$19 million and \$30 million above from Citi
2 and CSFB -- are those repo margin calls?

3 A. Correct.

4 Q. And explain how you would learn about a
5 repo margin call.

6 A. A dealer would usually just call us up and
7 tell us, "Hey, your assets aren't worth" -- shall I
8 explain repos?

9 Q. I don't think -- let's not go through repos
10 again. It's been a little bit of a long trial so
11 far.

12 A. So the underlying collateral that kind of
13 backs the repo, right, is not valued as much as it
14 once was. So they would call up and say, "You need
15 to pony up some cash because it's not worth as much
16 as it once was."

17 Q. So when you're talking about a dealer,
18 you're talking about a Wall Street bank?

19 A. Yes.

20 Q. And when you're talking about us, do you
21 mean you would get a call?

22 A. Primarily Xen Stanhope and Pat Feldman.

23 Q. So and how would you personally learn about
24 margin calls coming in?

25 A. Xen Stanhope or Pat Feldman would tell me.

1 So whenever I ran these liquidity reports, the first
2 thing I did was pretty much just run over and say,
3 "What happened?"

4 Q. And so do you mean literally every morning
5 you'd pop your head in one of their offices and say,
6 "Did we get margin calls today?"

7 A. They didn't have an office. They were a
8 cube down. So I would yell at them, yes.

9 Q. Got it. And looking at the \$49 million in
10 margin calls, I just wanted to clarify on the next
11 page, which is the actual report, if we look at the
12 upper-right corner again for the first few days, the
13 first entry for margin calls is, you know, negative
14 \$34.6 million. So I'm just wondering how you got to
15 that number, if you recall.

16 A. I don't recall. I think that 34 -- is that
17 the swap one? And maybe --

18 Q. If you look at the cover page, it says,
19 "tomorrow we'll face a \$32 and a half million auction
20 swap call." So I think that's what's in the second
21 line. I just wasn't sure how you arrived at \$34.6
22 million, because the cover email does indicate \$49
23 million in margin calls.

24 A. I'm not sure. I know that there was one of
25 these reports where I made a mistake and I corrected

1 it following, and I can't remember the exact date.

2 But I'm wondering if this is that report.

3 Q. But in any case, on this date, for
4 instance, on February 13, 2008, it shows a change in
5 cash of negative \$27 and a half million,
6 approximately, resulting in a liquidity balance of
7 about \$42 million; is that right?

8 A. Right.

9 Q. Then if we could look at the next day which
10 is Exhibit 37, February 14. So you're sending out a
11 corrected report here?

12 A. Yep.

13 Q. And this is, like you said, sometimes you'd
14 send out a second report; is that right?

15 A. Correct.

16 Q. Okay. And here you have a beginning cash
17 balance of \$76 million; is that right?

18 A. Yes.

19 Q. \$2 million of agency?

20 A. Yep.

21 Q. And then \$32 and a half million in margin
22 calls from CSFB and \$30 million from Goldman; is that
23 right?

24 A. Correct.

25 Q. Then if we look at the next page, the

1 report itself, those are reflected in the upper
2 right-hand corner with the margin call of negative
3 \$62.5 million; is that right?

4 A. Yes.

5 Q. And so this report, the next day, on
6 February 14 shows a change in cash of about negative
7 \$80 million, resulting in a projected negative cash
8 balance of about \$2.3 million; is that fair?

9 A. Correct.

10 Q. Now, were you concerned at this point about
11 the negative projected cash balance?

12 A. Yes.

13 Q. Why?

14 A. Because it is negative and it's low. But
15 you know, there are two things that I would want to
16 point out about this report. One, if you look at the
17 next day, the cash balance jumps up pretty
18 significantly. So I believe that is a P&I day, so
19 kind of the sentiment was, if we could just make it
20 past one day, then we should be okay.

21 And the other thing is that this also kind
22 of reports most liquid of the cash and agencies that
23 we have, but we do have other forms of liquidity that
24 aren't being captured here that would -- that could
25 be tapped into to help alleviate this.

1 Q. And let's go to the February 19 liquidity
2 report. So now we're moving ahead in time five days.
3 Sorry, it's Exhibit 53. Moving in time five days,
4 and we show beginning cash balance of \$5 million,
5 zero agency, and \$5 million total then of the
6 combined; is that right?

7 A. Yes.

8 Q. And with today's notables of a \$79 million
9 margin call from CSFB?

10 A. Correct.

11 Q. With projected ending cash of \$76 million?

12 A. Correct.

13 Q. Then if we go to the next page or the
14 report itself, let's again look at the top right
15 corner like we've been doing. Can you see that
16 margin call again is represented in that column?

17 A. Yes.

18 Q. And so here we have a beginning cash
19 balance in the upper right of about \$5 million?

20 A. Yes.

21 Q. And then projected negative liquidity going
22 forward for, it looks like, four days?

23 A. Correct.

24 Q. Negative \$76 million, negative \$59 million,
25 negative \$57 million, negative \$55 million; is that

1 correct?

2 A. Right.

3 Q. And then the cash and liquidity goes
4 positive again because February 25 is going to be a
5 principal and interest day; is that right?

6 A. Right.

7 Q. Then you said you would learn, was it from
8 Mr. Stanhope and Mr. Feldman, when margin calls came
9 in?

10 A. Yes, correct.

11 Q. Would they also tell you when margin calls
12 were paid off?

13 A. Not so much in the known, when that
14 occurred. Typically it wasn't really until the next
15 morning that I found out.

16 Q. Did you discuss margin calls with
17 Mr. Goldstone and Mr. Simmons anytime during January
18 and February of 2008?

19 A. More as a messenger, just passing the
20 message along from Pat and Xen, I did, but I was
21 never really the source.

22 Q. When you say "being the messenger," can you
23 describe what those interactions with Mr. Goldstone
24 and Mr. Simmons were like?

25 A. Sure. They might pop their head in and go,

1 "Ralph, what happened with margin calls? I see Xen
2 and Pat are on the phone. Could you find out?"

3 I would run over when they're off the
4 phone, I'd find out, and send an email or tell them
5 in person.

6 Q. Back in February 2008 -- I know you said
7 now you're friends with Mr. Goldstone and
8 Mr. Simmons. Did you consider yourself friends with
9 them back in February of 2008?

10 A. Yes, not as close as now. But yes, I saw
11 them more as my bosses. So you're as much of a
12 friend as you could be with your boss.

13 Q. It sounds like you talked with them with
14 some regularity. Is that fair to say?

15 A. Yes.

16 Q. Can you characterize how regular they would
17 pop in their head or you'd pop in?

18 A. Yeah, I would say definitely once a week,
19 and more frequently towards busy times. So it would
20 be as often as daily.

21 Q. As often as daily, for instance, during
22 those two weeks in February with low liquidity?

23 A. Yes.

24 Q. Is it fair to say that during -- starting,
25 you know, in mid-February up until the time that the

1 Form 10-K was filed on February 28, that the tone was
2 frantic at Thornburg?

3 A. Yes.

4 Q. And is it fair to say that it was crisis
5 mode at Thornburg?

6 A. Yes.

7 Q. Why would you say that it was crisis mode
8 at Thornburg?

9 A. Well, it was crisis mode for everybody in
10 the financial industry. Things were happening that
11 nobody expected to have happened. And so when there
12 is a fire right outside your door, you do whatever
13 you can to protect yourself.

14 Q. And we've seen some negative balances on
15 some of these liquidity reports, and you said you had
16 expressed some concern. Did you ever have
17 conversations with Mr. Goldstone or Mr. Simmons about
18 those negative balances?

19 A. Yes, in the sense that I would share the
20 report. I was a pretty junior analyst so it was kind
21 of produce the report, show it to them, and say, "Not
22 looking good," and then they would react accordingly.

23 Q. And when you say "react accordingly," what
24 would they say?

25 A. Well, that's kind of where I would kind of

1 not be involved. So it would primarily be going over
2 to Xen or Pat and seeing what kind of pieces could we
3 do. Like I mentioned, there are other pieces of
4 liquidity, other than just the two that are mentioned
5 on the email. So things like I/O pieces, or any
6 other types of subs that we might be able to put up
7 would be discussed.

8 Q. And when you said you'd go tell Mr.
9 Goldstone and Mr. Simmons, you know, that -- I'm
10 sorry, you said something about, you know, "Not
11 good." What do you mean by that? Would you just go
12 in their office and hand them a report, something
13 like that?

14 A. Yep, as simply as that. If they were quite
15 busy, because they were on the phones because of it
16 being crisis mode, it's just kind of what you see on
17 the email.

18 Q. Because they were getting it by e-mail,
19 too?

20 A. Yes.

21 Q. And I know you brought up these other forms
22 of liquidity a few times without me asking about
23 them. Are these the sources of liquidity you talked
24 about with defendants' lawyers during that two-hour
25 meeting?

1 A. No. I mean, we did talk about it, but I
2 was aware of it beforehand.

3 Q. You knew the various sources of liquidity
4 of the company?

5 A. Yeah. That was part of my job.

6 Q. So let's look at Exhibit 75. So this
7 email, like all of the others, was from you to Mr.
8 Goldstone and Mr. Simmons, as well as a variety of
9 other people; correct?

10 A. Correct.

11 Q. And it shows beginning cash of \$15.6
12 million; is that right?

13 A. Yes, correct.

14 Q. And then if you look under today's notables
15 it has a total of \$246 million in margin calls. \$196
16 million from Citigroup, \$42 million from Greenwich,
17 and a few million from Goldman and UBS. Do you see
18 that?

19 A. Yes.

20 Q. So you've projected the ending cash at \$233
21 million as of February 21; is that right?

22 A. Correct.

23 Q. Then if we go to the next page of the
24 report or actually go to the report itself on the
25 third page, if we could expand the entire right side

1 from "manual" on over.

2 And first of all, focusing at the top, do
3 you see that margin call portion that you included on
4 all the reports? So that's where you showed the 254
5 million in margin calls; correct?

6 A. Correct.

7 Q. Then you have the cash balance of negative
8 \$233 million for that day, the 21st; correct?

9 A. Correct.

10 Q. Then if you scroll down the column for
11 every day going forward through April 9, there is a
12 negative projected balance down to about negative \$85
13 million on the last days; is that correct?

14 A. Right.

15 Q. Now, I'd like to show you Exhibit 74. Now,
16 Exhibit 75 was sent at 7:38 in the morning. Can we
17 quickly just go back to Exhibit 75 so we can see that
18 time stamp. So Exhibit 75 was sent at 7:38 in the
19 morning; is that right?

20 A. Correct.

21 Q. Now, going back to Exhibit 74, this is an
22 email that you're sending to Mr. Fellers alone at
23 9:01 a.m. the same day; right?

24 A. Correct.

25 Q. So less than 90 minutes after you

1 circulated the liquidity report showing negative \$233
2 million projected liquidity; right?

3 A. Right.

4 Q. And here there is nothing more than
5 projected through May 2008 on the cover email;
6 correct?

7 A. Correct.

8 Q. Then if we go to the third page of the
9 document, which is the report itself, and again, if
10 we expand, let's expand the upper right. So 90
11 minutes after you had sent out that first liquidity
12 report on February 21, 2008, this liquidity report
13 does not have any margin calls; correct? Under the
14 margin call column, it's empty.

15 A. Correct.

16 Q. That's why, when you look on the right
17 side, you have a positive cash balance of \$20
18 million; is that correct?

19 A. Right.

20 Q. So the difference between these two reports
21 is simply that this does not include margin calls.

22 A. Correct.

23 Q. And if we scroll all the way down to the
24 bottom of the right hand, we see that the projected
25 liquidity ends up being a positive \$375 million; is

1 that right?

2 A. Correct.

3 Q. Now, do you recall that on the prior
4 liquidity report from 90 minutes before, on April 9,
5 it showed a projected liquidity of negative \$85
6 million?

7 A. Yep.

8 Q. And so here on April 9, if we could stay on
9 Exhibit 74, down on April 9 it shows a positive
10 balance of about \$375 million; is that right?

11 A. Yes.

12 Q. So what is the difference between \$375
13 million and negative \$85 million?

14 A. Pretty much the 450, so about 450 in margin
15 calls.

16 Q. About \$450 million?

17 A. I believe so.

18 Q. Okay. So why did you -- first of all, did
19 you personally change the February 21 liquidity
20 report?

21 A. I did.

22 Q. And why did you do that?

23 A. So as kind of -- you made the similar
24 observation. The other report did not look good in
25 terms of a negative balance. Nate Fellers came to me

1 and mentioned that we are working with the repo
2 counterparties so that we can actually negotiate with
3 them, and did not want to reflect the margin calls in
4 that other cash report. So that's why that second
5 report was only sent to Nate. And I believe he sent
6 that along to the repo counterparties.

7 Q. Okay. And again, who did Mr. Fellers
8 report to at this time?

9 A. It was Clay Simmons and Larry Goldstone.

10 Q. And you said that Mr. Fellers -- did Mr.
11 Fellers tell you that he wanted a version to send to
12 repo parties without the margin calls in it?

13 A. Correct.

14 Q. And did you have an understanding of why he
15 wouldn't want to reflect those margin calls to the
16 counterparties? By the way, the counterparties are
17 the Wall Street banks; right?

18 A. Yes.

19 Q. Did you have an understanding why he
20 wouldn't want to show those to the Wall Street banks?

21 A. Yeah. We didn't want them to see the
22 magnitude of what the calling was of the other banks.
23 So during this time, the repo counterparties
24 themselves are -- they're strapped for cash,
25 themselves. So you know, if they knew that we had

1 lots of margin calls coming in, they themselves might
2 pick up their own in order to try to get as much of
3 it as they could.

4 Q. Okay. Let's look at the next day, February
5 22, which is Exhibit 89. And so here we look at the
6 February 22, 2008, liquidity report. And it shows
7 beginning cash balance of \$10.5 million; is that
8 right?

9 A. Correct.

10 Q. And a projected ending cash balance of \$51
11 million; is that right?

12 A. Correct.

13 Q. Now, these numbers don't factor into
14 account that over \$200 million in margin calls were
15 still outstanding on February 22; correct?

16 A. Correct. I should mention, though, that
17 these reports are made to be as accurate as possible
18 during the time of the report. And so at this time,
19 because Nate was negotiating with the repo
20 counterparties, they did pause on the margin calls,
21 and so until the deal was kind of worked out, and
22 that is what's kind of being reflected here in the
23 report.

24 Q. Okay. Then let's go ahead and look at the
25 report itself, on the third page of the document.

1 And again, just looking at the upper right-hand
2 portion of the document. Okay. So you see that this
3 is the February 22 liquidity report. Now, this was
4 the one that you circulated internally like you
5 always did right at this time.

6 A. Correct.

7 Q. So under margin call, that column that
8 clearly says margin call is empty; correct?

9 A. Correct.

10 Q. And so then you see the beginning cash
11 balance of \$10.5 million, with the projected ending
12 balance of \$51 million; is that right?

13 A. Correct.

14 Q. Now, if we could keep that up, you've been
15 talking about Mr. Fellers providing liquidity reports
16 to the Wall Street banks, but KPMG also reviewed
17 liquidity reports; correct?

18 A. Correct.

19 Q. And did Jenni Hall look at liquidity
20 reports during February 2008?

21 A. Yeah, she did.

22 Q. And part of what you ended up doing was
23 emailing liquidity reports to Ms. Hall as part of
24 your job; is that right?

25 A. Correct.

1 Q. Okay. So if we could, Mr. King, keep that
2 up and move it off to the side, if that's possible,
3 and I want to look at Exhibit 91. So if we could
4 expand the top. So this is the same day, so it's
5 dated February 28 in the afternoon. Do you see that?

6 A. Yes.

7 Q. And do you see that it is the February 22
8 liquidity report?

9 A. Yes.

10 Q. And it says, "Can you forward this to Jenni
11 and Cynthia? I don't know their emails or last
12 names." Now Jenni and Cynthia. Does that refer to
13 the KPMG auditors?

14 A. Correct.

15 Q. And I take it from your email that this
16 time you didn't know their last name and their
17 emails, so you couldn't send the email to them
18 yourself; correct?

19 A. Correct.

20 Q. So would this have been the first time that
21 you sent this liquidity report by email to KPMG?

22 A. By email, yes. But I believe that -- yes.
23 I was under the impression that Shawn Buniel was
24 sharing it with them beforehand. And yes, to answer
25 your question by email, yes.

1 Q. And when you said you were under the
2 impression that Shawn Buniel was doing that, you were
3 not doing it?

4 A. I was not.

5 Q. Okay. And did Ms. Hall review the reports
6 before this date that you emailed her?

7 A. Yes, she did.

8 Q. In what context? Would she come to your
9 cubicle and you explain what they were?

10 A. Yes.

11 Q. Got it. So it says, "To Ms. Auditors. The
12 format has changed a little bit. I had to separate
13 out the other values and give them descriptions so
14 now days can span over 2 to 3 items but hopefully
15 it's still pretty clear. Let me know if you have any
16 questions."

17 So let's look at the next page which is the
18 report itself, and again I want to expand the top of
19 the document. Now, first of all, we have the same
20 beginning cash in both of them, but then the
21 projected cash balance is a little bit lower on the
22 left. Is that an indication that something changed
23 during the day, you know, before 2:00 in the
24 afternoon?

25 A. It must have.

1 Q. But then under the manual section, you'll
2 notice how on the right side the internal liquidity
3 report, just like every liquidity report we've seen
4 up until now, says, "Margin call." Do you see that?

5 A. Yes.

6 Q. Now this version that you sent to KPMG
7 doesn't say "Margin call." It says "Notes." Did you
8 change the reports from margin call to notes?

9 A. Yes.

10 Q. Why?

11 A. Larry wanted more -- Mr. Goldstone wanted
12 more information in the other, so that 33.9 wanted to
13 be able to break it out and actually understood what
14 the other different pieces came from. The notes, the
15 left-hand side was kind of superior in format because
16 it would allow me to actually put in margin calls
17 plus the CP or the I/O pieces and be able to actually
18 describe it out in multiple lines rather than just
19 limit it to just one call.

20 Q. To be clear, Mr. Goldstone told you to
21 remove the margin call entry and replace it with
22 notes?

23 A. No. To be clear, he asked me to have more
24 descriptors on the other. The report was already
25 cramped in space. It was the only solution I could

1 think of to break it out.

2 Q. And on the 22nd, the day after we saw the
3 negative \$233 million suddenly positive, did Mr.
4 Goldstone or Mr. Simmons ask you, "Hey, why did we
5 turn positive? Where did the negative liquidity go?"

6 A. Not directly to me. They were well aware
7 of what was happening with Nate Fellers and the repo
8 counterparties.

9 Q. So do you remember understanding Mr.
10 Goldstone and Mr. Simmons were well aware of what was
11 going on with the liquidity reports?

12 A. Yes.

13 Q. Now, if we look at Exhibit 99, this is the
14 February 25 email to Ms. Hall attaching a liquidity
15 report. Now, you don't include, when you send the
16 e-mail to KPMG, the information like today's notables
17 and the sort of thing we've seen on the other emails;
18 right?

19 A. It appears so, yes.

20 Q. Why didn't you do that?

21 A. I don't think any reason. I think they
22 were just asking for the actual report itself, so I
23 just sent them just the report.

24 Q. Then we look at the attached liquidity
25 report. Nothing -- if we look at the upper

1 right-hand side, nothing on this liquidity report has
2 any indication of nearly \$100 million of a Citi
3 margin call still being owed; correct?

4 A. Correct.

5 Q. Then if we go to Exhibit 110, so this is
6 the February 26 email with the liquidity report. And
7 there you talk about P&I days where some money came
8 in, et cetera. Do you see that?

9 A. Correct, yes.

10 Q. But again, not containing today's notables
11 and the other section, like you said before?

12 A. Correct.

13 Q. And if we look again at the liquidity
14 report on the next page, again, there is nothing to
15 indicate anywhere, including the upper right, that a
16 large portion of Citi margin call remained unpaid on
17 February 26; correct?

18 A. Correct.

19 Q. Then on February 27, Exhibit 124. So this
20 is the day before the 10-K was filed; correct? Do
21 you remember?

22 A. No, I don't. I'll take your word for it.

23 Q. So again, forwarding the liquidity report
24 here without comments, and then again, if you look at
25 the liquidity report itself in the upper right

1 column, is there anything here to indicate that still
2 on February 27, 2008, hours before the 10-K was to be
3 filed, that Thornburg still had not paid \$75 million
4 of a Citibank margin call?

5 A. No.

6 Q. Let's look at Exhibit 129. Do you remember
7 whether, after the 10-K was filed, you stopped
8 forwarding liquidity reports to KPMG?

9 A. I don't recall.

10 Q. Do you remember that there was a
11 restatement in March of 2008?

12 A. I do.

13 Q. Do you remember or were you involved with
14 KPMG getting copies of liquidity reports from
15 February as part of the restatement process?

16 A. So dates become kind of vague to me during
17 this whole time. There were Jenni and team would
18 come up and audit the liquidity reports and ask for a
19 particular day's. If they requested it, I provided
20 that, as necessary. I don't know if it was before or
21 after the 28th, or not.

22 Q. But at some point in there, you remember
23 giving KPMG copies of liquidity reports?

24 A. Yes.

25 Q. And you would expect that those would show

1 up in KPMG's files?

2 A. Correct.

3 Q. Let's look at Exhibit 129, which is the
4 February 28 liquidity report. So I'll represent to
5 you that the 10-K was filed just a couple of hours
6 before this email. If you look here it says,
7 "Beginning cash, \$38.2 million." Do you see that?

8 A. Yes.

9 Q. "Beginning agency zero." So the beginning
10 cash/agency is \$38.2 million; is that right?

11 A. Correct.

12 Q. Now, under today's notables, are there any
13 margin calls listed under today's notables?

14 A. There is not.

15 Q. Okay. And so then there is a projected
16 ending cash of \$109 million; is that right?

17 A. Correct.

18 Q. Why weren't there any margin calls included
19 in the February 28 liquidity report?

20 A. I'm not too sure. I'm assuming that there
21 were no margin calls, but I'm unaware.

22 Q. Let's check that assumption. Let's look at
23 Exhibit 142. So on February 28 at 7:23 a.m., so that
24 was before, about an hour before your liquidity
25 report, Mr. Fellers wrote to Mr. Goldstone and Mr.

1 Simmons with the subject, "Important," in all caps,
2 "Update." Do you see that?

3 A. Yes.

4 Q. Then it says, "I've had calls with Merrill,
5 Bear, and Citi, and will continue to make the rounds.
6 The calls are generally positive, but there is
7 definitely an undertone of fear. I think the filing
8 has sparked a collateral grab situation." Do you see
9 that?

10 A. Yes.

11 Q. Then it says, "Margin calls today. Morgan
12 Stanley, \$4.7 million. UBS, \$61.5 million. IXIS, \$9
13 million. Greenwich, \$18 million. Citi, \$36 million.
14 Goldman, \$4.5 million. JPMorgan, \$25 million." Do
15 you see those?

16 A. Yes, I do.

17 Q. I can tell you that I used a calculator
18 last night. That total is \$158.7 million of margin
19 calls received on February 28, 2008. Does that
20 number look correct to you?

21 A. Yes, roughly.

22 Q. So Mr. Fellers didn't tell you about the
23 margin calls received that morning?

24 A. He did not.

25 Q. Mr. Stanhope, Mr. Feldman -- they didn't

1 tell you about the margin calls received that
2 morning?

3 A. He did not. But typically to produce these
4 liquidity reports, they take some time to actually
5 update and make -- I mean, the time stamps, even
6 though you state it's an hour before, it takes me
7 about an hour and a half to produce these reports.
8 It may just be a difference in timing.

9 Q. Do you remember learning about these margin
10 calls at some point?

11 A. I do. Afterwards, yes, I don't know if it
12 was exactly on the day of the 28th or the 29th.

13 Q. Let's keep Exhibit 142 up on one side of
14 the screen, and if we go back to Exhibit 129. So on
15 the prior liquidity reports we've seen the margin
16 calls simply subtract from the projected ending cash;
17 correct?

18 A. Correct.

19 Q. All right. And so the margin calls
20 received on February 28, 2008, were in the amount of
21 \$158.7 million. If you subtract that from
22 Thornburg's projected ending cash on February 28,
23 what number do you arrive at?

24 A. You said it was \$158.

25 Q. \$158.7.

1 A. So it would be a negative \$49 million.

2 Q. Negative \$49 million on February 28, 2008.

3 And then again, Mr. Goldstone is recipient and Mr.
4 Simmons is a recipient of both of those emails;
5 correct?

6 A. Correct.

7 MR. BLISS: No further questions.

8 THE COURT: Thank you, Mr. Bliss.

9 Do Mr. Goldstone and Mr. Simmons have
10 cross-examination, Mr. Lee?

11 MR. LEE: Yes, Your Honor, thank you.

12 THE COURT: Mr. Lee.

13 MR. LEE: And Your Honor, with the Court's
14 permission, at some point in the examination we'd
15 like Mr. Ahn to draw a diagram on the board there.

16 THE COURT: That's fine.

17 MR. LEE: May I move the board now in
18 position?

19 THE COURT: You may.

20 CROSS-EXAMINATION

21 BY MR. LEE:

22 Q. Good afternoon, Mr. Ahn. Did Mr. Goldstone
23 ever tell you to change the format of the liquidity
24 reports in order to hide margin call information from
25 KPMG?

1 A. He did not.

2 Q. Did Mr. Simmons ever tell you to change the
3 format of the liquidity reports in order to hide
4 information from KPMG?

5 A. He did not.

6 Q. Did anyone at Thornburg tell you to change
7 the format of the liquidity reports in order to hide
8 information from KPMG?

9 A. No one did.

10 Q. Do you have any reason to believe that Mr.
11 Fellers wanted you to change the format of the
12 liquidity report in order to hide information from
13 KPMG?

14 A. No, he did not.

15 Q. And did Mr. Goldstone ever tell you at any
16 point during your four years at Thornburg to conceal
17 any information from KPMG?

18 A. No, never.

19 Q. Did Mr. Simmons ever tell you at any point
20 during your four years at Thornburg to conceal
21 information from KPMG?

22 A. No, he did not.

23 Q. And do you have any reason to believe that
24 Mr. Fellers ever intended for you to conceal
25 information from KPMG?

1 A. He did not, either.

2 Q. Now that we've established that, I'd like
3 to go back and ask you some background questions. As
4 Mr. Bliss elicited, we've met before; right?

5 A. Correct.

6 Q. And even though the SEC called you as a
7 witness in its case, you're aware that we, on behalf
8 of Mr. Goldstone and Mr. Simmons, also intended to
9 call you as a witness in our case; right?

10 A. Correct.

11 Q. And you're aware that we reached an
12 agreement with the SEC so that you can do all of your
13 testimony at once, so that you don't have to come
14 back; right?

15 A. Yes. I'm a popular guy.

16 Q. I'd like to start by talking just a little
17 more about the structure and organization of the
18 capital markets group. If you could just tell us
19 generally just kind of, you know, what the capital
20 markets group did and the different functions and
21 groups within capital markets.

22 A. So I would say the head of capital markets
23 was Nate Fellers, whom we've mentioned quite a bit.
24 And it was broken down into three sections,
25 functions. So there was analytics, kind of what I

1 was part of, and a couple others. Then there was
2 more of the market-facing, which was Pat Feldman and
3 Xen Stanhope and a few others.

4 And then there was those related to loan
5 origination, and I don't think those names came up.
6 I don't think we have to mention them.

7 Q. Then more specifically, with respect to the
8 analytics group, that was the group that you were in?

9 A. Yes.

10 Q. What did the analytics group do?

11 A. Everything that had to be done. So if it
12 required advance modeling, then, you know, we
13 performed the numbers and calculated them. And so it
14 ranged from liquidity reports, earnings models, ALCO
15 reports, which I mentioned earlier, any of those kind
16 of items.

17 Q. And do you remember the names of the people
18 who worked in the analytics group during, say, late
19 2007 and early 2008?

20 A. Yeah, so that would be Kyle Rhoades, who as
21 I mentioned was my manager. There was me. There was
22 Dwight Burks, Devona Benavidez, and Perry Martin.

23 Q. And then how about the market-facing group?
24 Can you just describe a little bit more what the
25 market-facing group did?

1 A. Yeah, they called up all those repo
2 counterparties or CP counterparties, CP being
3 commercial paper, and kind of getting a gauge of
4 activity, what they were concerned about, margin
5 calls, as mentioned, those kind of things.

6 Q. And do you recall who worked in the
7 market-facing group at capital markets in the late
8 2007, early 2008 time frame?

9 A. I do. So that was Xen Stanhope, Pat
10 Feldman, Deborah Gage. Yeah, Deborah Gage, and Dan
11 Petrush.

12 Q. Then finally you mentioned the third group
13 was the loan origination group?

14 A. Correct.

15 Q. Generally at a high level, what did they
16 do?

17 A. They kind of helped with purchasing of
18 mortgages and originating of mortgages. That's
19 pretty much right.

20 Q. And do you recall who worked in that group
21 in late 2007, early 2008?

22 A. Yes, John Dowell and Blake Gordon. Sorry.
23 I forgot her last name. She got married so I have a
24 hard time remembering.

25 Q. And all of these folks reported directly or

1 indirectly to Mr. Fellers?

2 A. Right.

3 Q. And I take it the capital markets groups
4 offices were located at Thornburg's headquarters?

5 A. Yes.

6 Q. In Santa Fe?

7 A. Yes.

8 Q. Now, just to focus a bit more on the
9 analytics group and the work that you did, you talked
10 about earnings reports or earnings models?

11 A. Correct.

12 Q. Can you describe what the earnings models
13 were and what the purpose was?

14 A. Yeah. So it's just an attempt to see how
15 much the company would make over a set time period,
16 usually about three years, based on kind of current
17 market situations and assumptions by management and
18 projecting what the income would look like over that
19 time period.

20 Q. And how often did you prepare those kind of
21 reports?

22 A. About monthly.

23 Q. And how about -- you mentioned the ALCO
24 reports. What were those?

25 A. ALCO, again, asset liability committee. So

1 anything that had to do really with risk would be
2 present inside of those reports.

3 Q. Could you be a little more specific?

4 A. Yeah. So the main report that we would
5 generate is one that was called duration report. And
6 what that pretty much says is how sensitive the
7 entire portfolio would be to a change in interest
8 rates. And we have other reports like liquidity
9 reports, the interest rate kind of market overview,
10 so how much has the markets actually changed since
11 the last time we met in ALCO, and a whole bunch of
12 kind of reports related to the loan origination, too.

13 Q. And then you referenced the ALCO meetings,
14 as well; is that right?

15 A. Yes.

16 Q. ALCO stands for the asset liability
17 committee; right?

18 A. Correct.

19 Q. So you prepared ALCO reports for the ALCO
20 committee?

21 A. Correct.

22 Q. Could you describe who was on the ALCO
23 committee and what its purpose and function was?

24 A. Almost everyone of a high-ranking official
25 would be present. So Larry Goldstone, Clay Simmons,

1 Nate Fellers. I would be present, and many others.

2 Q. And what was the purpose of that committee?

3 A. Again, to just review the contents of the
4 ALCO packet and to go over, really, anything that has
5 to do with the threats to the company, risks.

6 Q. When you say threats or risks to the
7 company, what do you mean?

8 A. Interest rate risks. Anything that is just
9 really the hot topic of that particular time. So it
10 depends. I mean, it was a very open discussion
11 about, we're about to do a securitization pricing.
12 What do we need to be worried about? Really, just --
13 it was all over the place. It was very
14 comprehensive.

15 Q. And you mentioned the duration reports.
16 Why did you keep track of -- what was the purpose of
17 a duration report?

18 A. Duration report was to kind of assess our
19 risk to a change in interest rates, so kind of if you
20 hear in the news about the fed chairman, which at
21 that time was Greenspan, and him changing rates, that
22 could have an effect on how the portfolio is valued.
23 So capturing that requires pretty heavy analytics, so
24 it had to be viewed and we would have to hedge our
25 risk, if necessary.

1 Q. How often did the ALCO committee meet?

2 A. Weekly.

3 Q. You said there were a bunch of kind of top
4 managers, I think is what you said. Can you recall
5 approximately how many people would typically attend
6 an ALCO meeting?

7 A. A lot, because ALCO was typically not
8 limited. It was really anybody who wanted to join
9 could join, and it became the place to be. So it
10 would get so full that there would be people standing
11 around to just listen in.

12 Q. So these weren't limited to a small select
13 group of people?

14 A. It was not.

15 Q. And you described a little bit with Mr.
16 Bliss the nature or degree of your interactions with
17 Mr. Simmons and Mr. Goldstone. Could you describe a
18 little more specifically -- let's start with Mr.
19 Simmons. What would typically be the reasons that
20 you would have interaction with him?

21 A. So if I was doing any runs on the earnings
22 model, or I just typically had any concerns with any
23 of the reports, I would walk into his office and
24 discuss it. The most time we would actually
25 communicate with each other is whenever these

1 earnings models were being produced, which were on a
2 monthly basis.

3 Q. Then the same question as to Mr. Goldstone.
4 Could you describe generally the types or reasons
5 that you would have interactions with him?

6 A. Yes. Similar things. So anything that had
7 to do with ALCO packets, if he wanted to see changes,
8 but again primarily when we would do runs of the
9 earnings model, I would go in there and ask him what
10 he would like to see and change accordingly.

11 Q. And I think if I'm counting correctly, Mr.
12 Rhoades, Mr. Fellers, Mr. Simmons, and Mr.
13 Goldstone -- there were either three or four levels
14 of managers between you and Mr. Goldstone?

15 A. Correct.

16 Q. Is that right? But you were still able to
17 go and approach and talk to Mr. Goldstone directly.

18 A. Oh, absolutely. He was very approachable,
19 always has his door open, and that was never a
20 concern.

21 Q. And the same with Mr. Simmons. He was at
22 least three levels -- two or three levels above you.
23 Were you able to approach him directly?

24 A. Yes, very much so.

25 Q. And was his accessibility similar to that

1 of Mr. Goldstone?

2 A. Yes, definitely.

3 Q. And you worked with each of them for
4 approximately four years?

5 A. Yes.

6 Q. Could you describe Mr. Simmons' style and
7 approach as a manager, as your manager?

8 A. Mr. Simmons?

9 Q. Mr. Simmons.

10 A. Yeah, so Mr. Simmons is very smart and very
11 intelligent and very experienced. And so I would say
12 that he's very highly principled in the sense that he
13 wants to get the clear message out of what's right.
14 And when it kind of comes to the entire room saying
15 it should be one way, he's the one guy that would
16 come up and say, "No, this is how it should be," and
17 change it.

18 And for me, that was kind of how I see Mr.
19 Simmons, is the one that he could impressively kind
20 of stand up and say things should kind of change.
21 And that came a lot from his kind of experience, from
22 the background, being working at Thornburg and
23 Countrywide before that. He was just very, very
24 smart.

25 Q. And then the same question with respect to

1 Mr. Goldstone. Could you describe generally his
2 approach as a manager and your experience with him as
3 your manager?

4 A. Yeah. So Larry is probably more of a --
5 he's a leader, so he's very charismatic, very
6 personable. Everybody is friends, you could say.
7 And he's very good at kind of unifying the entire
8 company to kind of follow his vision. And that's
9 what he's very good at.

10 Q. How would you describe the overall kind of
11 corporate culture, if you will, at Thornburg? Just
12 what was it like as a place to work?

13 A. It was a fantastic first job. It was very
14 flat, despite there being two or three levels of
15 management above me. It was very open. ALCO was
16 open. I mean, I learned a lot from Thornburg. It
17 was a lot of work. It was tough. Everyone worked
18 hard, and everyone played hard together, and it was
19 one of the best jobs I've had.

20 Q. And when you say it was very flat, what do
21 you mean?

22 A. Flat in the sense that typically when you
23 want to go approach somebody of that level, you would
24 have to go to a manager and get an okay and then go
25 to the next level, and so on and so on. But

1 everybody's doors were open, and everything was very
2 exposed, and it was very easy.

3 Q. Could you describe a little the physical
4 layout? I'll have you draw it in a second, but if
5 you could just describe the physical layout of the
6 capital markets department.

7 A. So the third floor was primarily where we
8 all were, and there were pretty much just cubes,
9 cubicles, really, and walls that were really just
10 above your chest that wrapped around the entire
11 group. The only ones that really had offices were,
12 like, Nate Fellers and Clay Simmons and Larry
13 Goldstone.

14 Q. And where was capital markets in relation
15 to other departments at the company?

16 A. Yeah, so there was accounting kind of
17 around the corner. And then just next to us was the
18 securitization department, and then a lot of kind of
19 further offices along the wall. And then everything
20 that had do with origination was on the second floor.

21 Q. So the third floor was capital markets and
22 accounting?

23 A. Yes, and securitization.

24 Q. And securitization, okay. And were the
25 departments physically segregated, or was it

1 basically sort of continuous?

2 A. It was continuous. The only segregation we
3 had was that low wall, low cubicle wall.

4 Q. And each of the capital markets -- did it
5 look a little like a trading floor? Did everyone
6 have kind of modern terminals?

7 A. Yes, correct.

8 Q. So could you -- if you were walking on the
9 floor, could you look over the cubicles and sort of
10 see what was going on?

11 A. Yes. Unfortunately, yes.

12 Q. And just describe a little more if you
13 walked onto the third floor of Thornburg Mortgage in
14 2008, what the sort of scene would have looked like.

15 A. Yeah, so kind of, like, everyone just
16 sitting around and working on their monitors. The
17 way it is, is that if you walked on the third floor,
18 you could pretty much just walk by us. Just to get
19 to accounting, you would have to go around the corner
20 and you would walk by capital markets, and
21 unfortunately, like I said, you could see my screen
22 and everybody else's screens, but that was kind of
23 the layout, yeah.

24 Q. Now, I think now would be as good a time as
25 any, with the Court's permission, I'd like to ask Mr.

1 Ahn if he could just do a diagram of the third floor
2 offices as best he can.

3 THE COURT: He may.

4 A. I'll do my best. So this was kind of
5 accounting department. This was kind of the hallway.
6 Right here would be Nate Fellers' office. Right here
7 was somebody else's office, and this was Larry's
8 office. There may have been another office. I may
9 have gotten that wrong, but right here is kind of a
10 stairway, and right here was capital markets. And
11 capital markets was consisting of really three
12 sections. And the openings were all here, and all of
13 these were very low bearing walls, and right here was
14 securitization. And along this wall here would be
15 Clay's office, and a few other offices over here.
16 And so in order to get to accounting, you pretty much
17 had to go like that.

18 Q. And where was your cubicle?

19 A. Right here.

20 Q. Then how about your manager, Mr. Rhoades?

21 A. Yeah, so just to lay everybody out, Mr.
22 Rhoades would be right here. The two members that I
23 had mentioned that was kind of more with origination
24 would be right here. Here was more of other analytic
25 members here, and then right here was kind of the

1 market-facing individuals. So when I said that I
2 would just pop my head up, I would just -- you
3 know...

4 Q. And then was there an elevator onto the
5 floor?

6 A. There was. So the elevators are over here.
7 There were some other cubes over here, but to get to
8 it, typically IT, to get through it, you have to get
9 past IT and come all the way out.

10 Q. Could you just initial that and put today's
11 date on it?

12 A. What is today?

13 Q. The 15th.

14 A. 15th.

15 Q. And the diagram that you've just drawn --
16 that is a fair and accurate representation of the
17 Thornburg third floor as it existed in early 2008?

18 A. Yes.

19 MR. LEE: Your Honor, we'd offer that into
20 evidence.

21 THE COURT: Any objection, Mr. Bliss?

22 MR. BLISS: No objection at all, Your
23 Honor.

24 THE COURT: What do we make this? Do you
25 have a number on it?

1 MR. McKENNA: Your Honor, we can mark it as
2 Exhibit QE.

3 THE COURT: Defendants' Exhibit QE will be
4 admitted into evidence.

5 (Defendants' Exhibit QE admitted.)

6 MR. McKENNA: May I approach?

7 THE COURT: You may.

8 MR. McKENNA: Your Honor, before I start a
9 new topic, would now be an appropriate time for a
10 restroom break?

11 THE COURT: If you'd like. All right.
12 We'll be in recess for a few minutes.

13 All rise.

14 (The jury left the courtroom.)

15 THE COURT: All right. Anything we need to
16 discuss?

17 MR. McKENNA: No, thank you.

18 MR. LEE: No, thank you, Your Honor.

19 THE COURT: We'll be in recess for a few
20 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. Anything we need to
23 discuss before we bring the jury in?

24 MR. McKENNA: No, thank you.

25 THE COURT: Mr. Lee?

1 MR. LEE: No, Your Honor.

2 THE COURT: All rise.

3 (The jury entered the courtroom.)

4 THE COURT: All right. Everyone be seated.

5 All right, Mr. Ahn, I'll remind you that
6 you're still under oath.

7 Mr. Lee, if you wish to continue your
8 cross-examination of Mr. Ahn, you may do so at this
9 time.

10 MR. LEE: Thank you, Your Honor.

11 THE COURT: Mr. Lee.

12 Q. (By Mr. Lee) Mr. Ahn, I'd like to now ask
13 you some questions about KPMG. All right? While you
14 were working for Thornburg, did you have regular
15 interactions with KPMG auditors?

16 A. Yes, I did.

17 Q. Could you describe just generally the
18 nature and extent of your dealings with KPMG?

19 A. So typically anything I produced, or they
20 need any explanation of analytics, they would just
21 stop by my desk and ask for particular reports or
22 we'll just go through it. Occasionally they'd send
23 email and I would share whatever information I could.

24 Q. Were there particular people at KPMG whom
25 you dealt with most frequently?

1 A. I dealt with a multitude of them, but the
2 one that I remember the most is Jenni Hall. In fact,
3 the only one I remember is Jenni Hall.

4 Q. That's the only one you remember
5 specifically by name?

6 A. Specifically. There were always a lot of
7 new faces coming through each time. So it seems like
8 she was the only consistent one I would see.

9 Q. And you said that members of KPMG would
10 just stop by your cubicle to ask for information;
11 right?

12 A. Correct.

13 Q. When you received a request like that, did
14 you have to go and ask permission from anybody at
15 Thornburg in order to respond to the request?

16 A. No, it was generally just share whatever
17 was available. It was quite open.

18 Q. And how did you know that you had that
19 authority to be able to provide information directly
20 to KPMG without going through your manager or asking
21 permission?

22 A. Typically, I think it was more by example.
23 So Kyle Rhoades was very much that kind of mentality,
24 which was share what we have, and so I followed by
25 example.

1 Q. And did you have any general understanding
2 as to the availability of information that was to be
3 provided to KPMG from capital markets?

4 A. No, I can't think of a time when I was
5 really restricted to share anything. So it was
6 pretty much just share what I had.

7 Q. Do you recall ever being asked not to share
8 anything with KPMG?

9 A. No.

10 Q. Do you recall ever receiving a request from
11 anybody from KPMG where you were told by somebody at
12 Thornburg not to respond or provide the requested
13 information?

14 A. No.

15 Q. And just generally, can you estimate how
16 often you dealt with somebody from KPMG, say, during
17 the audit period of early 2008?

18 A. So during the January and February time
19 frame?

20 Q. Yes.

21 A. So yes, because we were kind of in crisis
22 mode, they would come up quite frequently, pop up
23 quite frequently at my desk, asking for the liquidity
24 report or what's been going on, and I would share
25 what I knew.

1 Q. Did KPMG have offices at Thornburg?

2 A. I don't think so. I know they were located
3 somewhere on the second floor, but I don't know if
4 they were placed in an office or not.

5 Q. But they had a work space on the second
6 floor?

7 A. Yes.

8 Q. And was the second floor part of the
9 overall Thornburg space?

10 A. Yes, correct.

11 Q. And were there any restrictions on the
12 ability of anyone from KPMG to walk through or around
13 the third floor?

14 A. Not that I know of, no.

15 Q. Did you see KPMG auditors walking freely
16 around the third floor during the January and
17 February time frame?

18 A. Yeah, all the time. Frequently, yes.

19 Q. Did you see members of KPMG walking to the
20 accounting department during the January and February
21 time frame?

22 A. Yes.

23 Q. And if you could just, with the Court's
24 permission, show on the chart the jury where and how
25 you would see KPMG auditors walk to accounting.

1 THE COURT: You may.

2 A. So because the elevators are here, they
3 would all typically come down here and go to
4 accounting, or go the long way. Either way, they
5 passed right by me.

6 Q. Okay. Thank you. Do you know or did you
7 ever see Ms. Hall dealing with other members of
8 capital markets?

9 A. Yes, frequently.

10 Q. Whom did you see her dealing with most
11 often?

12 A. Almost equal time with everybody. I mean,
13 she talked to Kyle Rhoades, Xen Stanhope, Pat
14 Feldman, Nate Fellers, almost everyone.

15 Q. And did you ever see any occasion in which
16 Ms. Hall dealt with somebody else at Thornburg, and
17 somebody else at Thornburg would not respond to a
18 request from Ms. Hall?

19 A. No.

20 Q. Do you recall ever seeing an occasion where
21 people at Thornburg were talking, or you and your
22 colleagues at capital markets were talking, and you'd
23 stop talking because KPMG was in the room?

24 A. Probably because we were talking about
25 inappropriate things, but not related to work, but...

1 Q. And did you have -- did you ever socialize
2 with people from KPMG?

3 A. Yeah. I actually liked Jenni Hall quite a
4 bit. And there was a time that we actually -- after
5 everything happened, we actually went out for drinks
6 together.

7 Q. How about Ms. Reinhart? Did you ever see
8 her on the third floor of Thornburg?

9 A. No, never. I actually have no idea what
10 she looks like to this day.

11 Q. Now, we talked about the liquidity reports,
12 and I think you testified that you provided the
13 liquidity reports to KPMG; correct?

14 A. Correct, yes.

15 Q. And you began providing them to KPMG by
16 email at a certain date; right?

17 A. Correct.

18 Q. And Mr. Bliss showed that to you?

19 A. Correct.

20 Q. Before that date, do you recall providing
21 the liquidity reports to KPMG?

22 A. I do.

23 Q. And how do you recall providing those
24 reports to KPMG?

25 A. More in person, so -- because it was kind

1 of crisis time, and they were all over the place,
2 they would stop by my desk pretty often, and I would
3 provide a printed-out report to them and discuss it
4 with them.

5 Q. And do you recall how often you provided
6 the liquidity reports to KPMG?

7 A. As frequently as they asked. So again, I
8 don't know exactly specifics, if it was exactly
9 daily. But whenever Jenni Hall stopped by, she would
10 say, "Reports?" And I would provide it.

11 Q. Were there ever any requests for reports
12 for a particular day that you didn't provide to KPMG?

13 A. No.

14 Q. And when you -- I think you testified you
15 first started creating these reports in January, late
16 January or so?

17 A. Correct.

18 Q. When you started creating these reports,
19 did you explain them to KPMG?

20 A. Yes. So I believe I explained them almost
21 over three times to particular individuals at KPMG,
22 for lack of a better term, their minion, the lackeys
23 would come up and often ask me, and I would have to
24 walk them through it from left to right. And I did
25 that at least three times.

1 Q. And so you explained exactly what -- how
2 they were calculated, or how they were prepared, the
3 contents, how to read them, and so on?

4 A. Yes, correct.

5 Q. Did you provide that explanation to Ms.
6 Hall?

7 A. Yes.

8 Q. And what do you recall about that?

9 A. Like I said, the reason why I liked Jenni
10 was because she was competent. She could actually
11 follow. So kind of showing her things were easier,
12 and she got it. She walked away understanding what
13 the report was.

14 Q. So at least you had the understanding and
15 impression that Ms. Hall understood the reports?

16 A. Correct.

17 Q. And understood how to read them?

18 A. Correct.

19 Q. How about other members of KPMG? Did you
20 have the understanding that they understood how to
21 read the reports?

22 A. I got a lot of yeses, but you know, it's
23 unclear exactly how much they understood. They were
24 fairly green, I would say. Typically kind of felt
25 like straight out of college, so a lot of explanation

1 would be necessary.

2 Q. Did Ms. Hall ever say anything or do
3 anything to indicate that she didn't understand the
4 reports?

5 A. No.

6 Q. By the way, just one sort of background
7 question I forgot to ask. During January and
8 February of 2008 was Thornburg experiencing IT,
9 information technology, issues?

10 A. Yes, I believe there were some issues kind
11 of with the data.

12 Q. What do you recall about that?

13 A. We were kind of going through this
14 transition period where we were taking data tables
15 and trying to make them more universal. And at the
16 time, it sounded great, but it was very much a pain.
17 It made pulling data a little bit harder. So I think
18 I mentioned earlier these reports take me a few hours
19 to do them, mainly because the data was not as
20 readily available as it once was.

21 Q. What did you understand the purpose was of
22 this change in IT?

23 A. A lot of it was kind of more for the
24 origination programs, which are I don't think
25 anything really related to what we're talking about.

1 But the idea was, as we were growing, to try to make
2 a more -- better universal underlying data table.
3 And that was the extent of what we were trying to do.

4 Q. Now, if we can show you Defendants' Exhibit
5 HT. Now, Mr. Ahn, this is a document you are not on,
6 although you are mentioned by name. Exhibit HT is a
7 KPMG workpaper entitled "Test of operating
8 effectiveness in liquidity risk reports." Do you see
9 that?

10 A. Yeah. They butchered my name.

11 Q. They did indeed. In the sample size
12 selection, it says, "KPMG obtained the daily
13 liquidity report from Rallof Ann." And if we can go
14 to the second page. And if we could go to the second
15 page, you see it's a list of reports that were
16 provided to KPMG?

17 A. Yes.

18 Q. Do you recall providing those reports to
19 KPMG?

20 A. I do.

21 Q. How is it that you recall that?

22 A. I'm sorry, I couldn't hear that over the
23 cough. Say again.

24 Q. I'm sorry. I asked, do you recall
25 providing those reports?

1 A. I do.

2 Q. To KPMG?

3 A. Yes.

4 Q. And how is it you recall providing that
5 collection of reports to KPMG?

6 A. I remember that somebody stopped by my desk
7 and pretty much asked for each one of them, so I
8 printed each one of them out and provided them.

9 Q. Was that the first time that you had
10 provided those reports to KPMG?

11 A. In a mass fashion like this, might have
12 been. In fact, if I recall, they had some dates and
13 there were just some dates that were missing. I just
14 had to fill in the gaps.

15 Q. Now, Mr. Bliss asked you about the change
16 in the format of the liquidity reports.

17 A. Yes.

18 Q. Did you explain to KPMG that you had
19 changed the format of the reports?

20 A. I did.

21 Q. Whom did you explain that to?

22 A. Specifically whom I don't recall. I
23 definitely did lay it out in the email to Jenni Hall.
24 But in person, I don't recall exactly who.

25 Q. But you do recall explaining it in person

1 to somebody at KPMG?

2 A. Yes, they would always stop by during that
3 time and ask questions, and so I would relay that
4 information.

5 Q. And if we can go to Exhibit 99, please.
6 This is an email from you to Ms. Hall that Mr. Bliss
7 showed you from February 25 transmitting a liquidity
8 report; is that right?

9 A. Yes.

10 Q. And you write, "Sorry for the delay. The
11 power outage broke my computer." Do you see that?

12 A. Yes.

13 Q. Do you recall what you were referring to?

14 A. Yeah. As I'm sure the jury knows, Santa Fe
15 gets some epic rainstorms and occasionally knocks out
16 our power, and this was one of those days.

17 Q. And do you recall Ms. Hall responding to
18 you?

19 A. I believe she did. I don't remember
20 exactly what she says.

21 Q. Would it refresh your recollection to see
22 her response?

23 A. Yes.

24 MR. LEE: Your Honor, may I approach?

25 THE COURT: You may.

1 Q. (By Mr. Lee) Do you have in front of you
2 an email response from Ms. Hall to you?

3 A. I do.

4 Q. And does that refresh your recollection as
5 to what she said?

6 A. Yes, it does.

7 Q. And how did she respond to your email to
8 her about the power outage?

9 A. Read it out?

10 Q. If it refreshes your recollection, yes.

11 A. Sure. She says, "No problem. Thanks for
12 sending. It must have been the giant cash balance
13 that caused the power outage. Smiley face."

14 Q. What was that?

15 A. Smiley -- emoticon.

16 Q. And what did you understand her to be
17 meaning when she wrote that email in response to you?

18 A. That she understood that the cash came in,
19 and that's what could have caused the power outage.

20 Q. Now I want to show you, if we can pull up,
21 side by side, two of the liquidity reports that Mr.
22 Bliss showed you, Exhibits 74 and 75. These are both
23 dated February 21, and these are different formats of
24 the same liquidity reports. Do you recall that?

25 A. Yes.

1 Q. And they had -- one had margin calls and
2 the other didn't? Do you recall that?

3 A. Yes, correct.

4 Q. Now, if we can look at the first page of
5 each liquidity report and kind of blow up the upper
6 right-hand corner of each. Now, Mr. Bliss pointed
7 out the fact that one of them has a margin call and
8 the other doesn't. Do you see that?

9 A. Yes.

10 Q. Take a look at the column that's titled
11 "Equity raise." Do you see they're different?

12 A. Yes.

13 Q. And the one with the margin calls has four
14 entries, and the other one has additional entries.
15 Do you have an understanding as to why you changed
16 that part of the report, as well?

17 A. I don't recall specifically. I'm assuming
18 that more information was obtained from -- between
19 the timing of the two reports.

20 Q. And again, did you make that change in the
21 report with the intent of deceiving anyone?

22 A. No.

23 Q. Now, okay, we're done with that. Now, you
24 testified that Mr. Fellers asked you to change the
25 report in order to be able to provide a version of

1 the new report, the report without the margin calls
2 to the lenders; correct?

3 A. Correct.

4 Q. And you testified that your sort of
5 understanding was that he didn't want each lender to
6 know about the total volume of margin calls?

7 A. Correct.

8 Q. And did that concern you at all at the
9 time?

10 A. Yeah. I mean, the amount of margin calls
11 did concern me, yes.

12 Q. I meant that the change in format for
13 that --

14 A. No. I mean, that makes total sense as to
15 why he was doing that.

16 Q. And why does it make total sense?

17 A. The repo counterparties don't talk to each
18 other, right, so the idea is you want each of them to
19 kind of be able to see an unaltered cash flow, to be
20 able to kind of be able to negotiate a deal. And if
21 you show too much, then it takes away the message.

22 Q. And if we can pull up Defendants' Exhibit
23 BG, please. This is an email from Nate Fellers to
24 Elena Matrullo at Citigroup dated February 22
25 entitled -- or subject, 2/22/08 liquidity report Andy

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 843-9492



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 writes, Hi, Elena. The far right column is our
2 projected cash position. This report does not factor
3 in margin calls." And the "does not" is in all caps.
4 Do you see that?

5 A. Yes.

6 Q. And he goes on to report some additional
7 information about expected calls and incoming cash.
8 Do you see that?

9 A. Yes.

10 Q. Is this consistent with your understanding
11 that the reason for the change in the format of the
12 liquidity reports was for the lenders?

13 A. Yes.

14 Q. And is this consistent with your
15 understanding that the reason for the change in the
16 liquidity reports had nothing do with hiding
17 information from KPMG?

18 A. Correct.

19 Q. Now, Mr. Bliss showed you various liquidity
20 reports from various points in time, and I won't go
21 through them all. But do you have any reason to
22 believe that any given liquidity report from any
23 given day wasn't provided to KPMG?

24 A. No.

25 Q. And do you have any reason to believe that

1 any given liquidity report from any given day wasn't
2 available to KPMG upon request?

3 A. No.

4 Q. Oh, and I think, did you have an
5 understanding as to whether Mr. Goldstone or Mr.
6 Simmons was aware of the change in the format of the
7 liquidity report?

8 A. Yes. I think they were aware of the change
9 in the liquidity report.

10 Q. Now, Mr. Bliss asked you a little about the
11 margin call activity that occurred in February of
12 2008. Do you recall that?

13 A. Yes.

14 Q. Were you aware of the increased level or
15 heightened level of margin calls in February?

16 A. So specific days I am not. I won't
17 remember day by day. I do recall that there were
18 margin calls in February.

19 Q. Do you recall that some of those margin
20 calls were not paid in a single day?

21 A. Yes.

22 Q. And do you recall any discussion
23 surrounding the those margin calls?

24 A. Yes. We were working deals with many of
25 those counterparties. Like I said, they themselves

1 needed cash, and so rather than completely making
2 them solvent, they wanted to get cash even if it
3 meant over a couple of days rather than immediately,
4 at once. So they were willing to work with us.

5 Q. And how did you view the impact of the
6 margin calls that occurred in February on the
7 company's prospects going forward?

8 A. Well, so almost all of the liquidity
9 reports state that things would get better if we
10 could just ride it out. And I know that that was a
11 sentiment that was very strong at that time, was if
12 we could just get past this day or get past tomorrow
13 and get to the next P&I, then we should be in good
14 shape.

15 Q. And did you have that view, as well?

16 A. Yes.

17 Q. Was your view on the company's ability to
18 manage the margin calls in February informed at all
19 by the experience of August of 2007?

20 A. Yes, in the sense that we had a feeling we
21 would get margin calls. We had no idea the magnitude
22 at which they would have occurred.

23 Q. And why do you say you had no idea? And
24 what does that have to do with August of 2007?

25 A. Yeah, so August 2007 was the first inkling

1 that something was going wrong, so we knew something
2 was going to happen. But I remember that when we
3 first went into that crisis, this feeling that if we
4 could just ride it out, we'd be fine, and the typical
5 kind of crisis or recession only really lasts several
6 months. And we never thought that there would be a
7 double dip like it did in February, where it was a
8 greater impact.

9 Q. Do you remember discussion of that in an
10 ALCO meeting or in any ALCO meetings?

11 A. I do, yes.

12 Q. What do you recall about those discussions?

13 A. I recall kind of that similar -- just that
14 sentiment where, you know, Thornburg's business model
15 is based upon having really high-quality assets. And
16 the idea was that those really high-quality assets
17 would stand its price against the repo
18 counterparties, and pretty much, we could ride
19 through the crisis and be in great shape. What we
20 didn't account for was the baby-with-the-bath-water
21 kind of effect, where if mortgages get hurt somewhere
22 else, they would hurt us, too. And that's kind of
23 what happened. And in hindsight, I think it's just
24 the repo counterparties just needed cash themselves.

25 Q. And did you yourself hold this view that

1 the quality of Thornburg's portfolio would be strong
2 enough to sustain you through these times?

3 A. Yes, definitely. But that's one of the
4 most, I would say, frustrating parts about it. In
5 theory, if you look at it, it sounded very sound;
6 right? It sounded like a great idea. And in
7 practice we got hit for it. I mean, if you look at
8 our Thornburg mortgages, we had single basis points
9 in losses, which is -- basis points is very, very
10 small. It's like .01 percent of losses.

11 Q. Can you explain a little more what you mean
12 by single basis points in losses?

13 A. Yeah. So a typical loan, when somebody
14 defaults or can't pay for it, that would attribute to
15 kind of that loss percentage. And Thornburg
16 mortgages were underwritten so well that the only
17 losses that we incurred were well under like .1
18 percent, .2 percent. It was very, very low. And so
19 the idea is, as these crises occur, our defaults
20 occur, our assets should have held its price, but it
21 didn't.

22 Q. Now, how about the overall economic
23 environment and the interest rate environment? Did
24 the interest rate environment play into your thinking
25 about the company's ability to withstand the

1 challenges of February?

2 A. Yeah. So if I recall, rates were fairly
3 high at that time, and to kind of prevent the crisis
4 from spinning further, rates were dropping, and it
5 was actually very favorable for the Thornburg kind of
6 business model. So we were again anticipating and
7 hoping to take benefit of that, and it didn't happen.

8 Q. And when you say "we," did you yourself
9 hold that view?

10 A. Yeah, yes.

11 Q. And you yourself viewed that the declining
12 interest rate environment would be another factor
13 that would help the company survive the challenges?

14 A. Yeah. Yes.

15 Q. Now, Mr. Bliss asked you about what
16 happened on the day after the filing of the Form 10-K
17 and the fact that the company received a large volume
18 of additional margin calls. Do you recall that?

19 A. Yes.

20 Q. Do you recall how you felt on the day that
21 the Form 10-K was filed?

22 A. I do, which was a feeling of relief. I
23 actually recall Clay coming in and -- Clay Simmons
24 coming into our cubicle, being happy, because he was
25 feeling fulfilled that the 10-K was filed and all

1 margin calls were actually paid off.

2 Q. Did you feel the same way?

3 A. Absolutely. Yeah, I had a beer with
4 dinner.

5 Q. Did you expect that the company would
6 receive additional margin calls following the filing
7 of the Form 10-K?

8 A. I think it's unrealistic to say that we
9 wouldn't have received any margin calls. I knew we
10 would receive some. I did not expect the magnitude
11 that we did receive it.

12 Q. When you eventually learned of the
13 magnitude, I think you told Mr. Bliss you weren't
14 sure if it was that exact same day or maybe the next
15 day, or shortly thereafter, anyway. How did you feel
16 when you learned about the magnitude of the margin
17 calls that the company did receive?

18 A. It was very hard. It was very hard to hear
19 that, because it was a feeling of we're past it and
20 good times ahead, but that's not what happened.

21 Q. And the feeling of we were past it -- you
22 shared that feeling, as well?

23 A. Yes.

24 Q. During your entire time at Thornburg, did
25 Mr. Goldstone ever ask you to do anything at all that

1 you thought was illegal or even unethical?

2 A. No.

3 Q. During your entire time at Thornburg, did
4 Mr. Simmons ever ask you to do anything at all that
5 you thought was illegal or unethical?

6 A. No.

7 Q. During your entire time at Thornburg, did
8 anyone at Thornburg ever ask you to do anything that
9 you thought was illegal or even unethical?

10 A. No.

11 Q. During your entire time at Thornburg, did
12 anyone ever ask you to do anything that you thought
13 was not the right thing to do?

14 A. No.

15 MR. LEE: May I have one moment, Your
16 Honor?

17 THE COURT: You may.

18 MR. LEE: Thank you, Your Honor. I don't
19 have any further questions.

20 THE COURT: Thank you, Mr. Lee. Thank you,
21 Mr. Ahn.

22 Mr. Bliss, do you have redirect of Mr. Ahn?

23 MR. BLISS: Yes, thank you, Your Honor.

24 THE COURT: Mr. Bliss.

25

1 REDIRECT EXAMINATION

2 BY MR. BLISS:

3 Q. Hello again, Mr. Ahn.

4 A. Hello.

5 Q. You were just talking about some various
6 aspects of your belief in Thornburg as a company, and
7 I'd like to ask you a few things about February 2008.
8 Were you aware that Thornburg held in its portfolio
9 25 percent, that is, of its portfolio was in Alt-A
10 securities in February of 2008?

11 A. Yes, that sounds familiar.

12 Q. And did you know that on February 21, Mr.
13 Feldman wrote a memo indicating that, quote, "The
14 margin calls created by this type of pricing," that
15 is occurring on February 21, 2008, "will surely
16 create even more selling, further impairing liquidity
17 in the MBS market"? Did you know he wrote that memo?

18 A. I did not.

19 Q. Did you know that on February 27, 2008, the
20 day before Thornburg's financial statements were
21 filed, Mr. Goldstone wrote to Mr. Simmons that,
22 quote, "You should know that a large Alt-A hedge fund
23 in Europe is blowing up this afternoon. UBS Credit
24 just mentioned it to me. They got hit with 20-point
25 haircuts on Alt-A AAAs overnight. I think we will

1 get this a little more gradually, but we should be
2 ready for it." Did you know that?

3 A. I did not.

4 Q. Now, in response to my questioning about
5 why the liquidity report was changed and the margin
6 calls were eliminated so that it went from a negative
7 \$233 million to a positive, you said that Mr. Fellers
8 did not want to reflect margin calls to the
9 counterparties. Do you recall that?

10 A. Yes.

11 Q. Let's look at Exhibit BG, which you were
12 just asked about. And this again was from Mr.
13 Fellers to Ms. Matrullo. I assume you never saw this
14 at the time?

15 A. Did not.

16 Q. And he wrote, "The far right column is our
17 projected cash position. This report does not," in
18 all caps, "factor in margin calls."

19 So in fact, Mr. Fellers did want to explain
20 to the banks, the Wall Street banks, that the report
21 didn't include margin calls; correct?

22 A. Yes, correct.

23 Q. And none of the emails we looked at from
24 you to KPMG attaching the liquidity report uses that
25 language, "This report does not factor in margin

1 calls"; correct?

2 A. Correct. But I mean, Jenni Hall was very
3 familiar with it. I mean, she would know that margin
4 calls -- I mean, she would have to ask and we talked
5 about it frequently.

6 Q. And speaking of Jenni Hall, I just want to
7 make sure I heard you right. Did you say that you
8 laid out the changes that you made in the liquidity
9 report in an email to Jenni Hall?

10 A. I thought I did, yes.

11 Q. Okay. Now, you testified that no one --
12 Mr. Goldstone, Mr. Simmons, Mr. Fellers -- ever told
13 you to hide anything from KPMG. That was your
14 testimony; correct?

15 A. That's correct.

16 Q. And you also testified that Mr. Goldstone
17 wanted to change the liquidity report to reflect more
18 information in the other column; is that right?

19 A. Correct.

20 Q. And if we go back to that liquidity report,
21 first of all let's look at Exhibit 89, which was the
22 internal liquidity report on February 22, the day
23 after the margin calls were removed, the \$250 million
24 in margin calls were removed. Do you recall this
25 internal liquidity report?

1 A. I do.

2 Q. And then the report itself, if you turn to
3 that, it says in the upper right-hand corner, "Margin
4 call" with a blank; correct?

5 A. Yes.

6 Q. All right. Then a few hours later you
7 emailed KPMG -- well, actually, in Exhibit 91 you
8 sent an email to Mr. Buniel because at this point you
9 didn't know Jenni's last name on February 22, that
10 afternoon; correct?

11 A. Correct.

12 Q. All right. And so you forward an email
13 with the liquidity report, or you ask for it to be
14 forwarded. And if we go to the liquidity report
15 itself and look at the upper right-hand column. So
16 this is the first email where you attach a liquidity
17 report and email it to KPMG; correct? We already
18 established that.

19 A. Correct.

20 Q. And every other liquidity report that we
21 saw prior to this date that was circulated internally
22 included the margin call column; correct?

23 A. Correct.

24 Q. And so your testimony, then, must be that
25 it's simply coincidence that the first time KPMG is

1 emailed a liquidity report, it has notes instead of
2 margin calls; correct?

3 A. Yes. But when you say "coincidence," it's
4 more than a coincidence. So before this, because we
5 were getting margin calls and because it was more of
6 a crisis, Jenni Hall was stopping -- was stopping by
7 my desk more so than necessarily waiting for an email
8 response. I mean, that's how she did things during
9 that time. So she was at my desk a lot more
10 frequently.

11 And then once we actually started talking
12 to the repo counterparties to slow down on the margin
13 calls, that's when we could have slowed down the
14 reports and she could actually wait for it to come in
15 the email form.

16 Q. Okay. Let's talk about that February 21
17 liquidity report again. And that's Exhibit 75. With
18 the projected negative \$230 million, if we could go
19 to the liquidity report itself report that's
20 attached. So if we highlight that right column
21 again, so of course, you recognize this as the
22 liquidity report projecting a negative cash balance
23 through April.

24 A. Yes.

25 Q. And if we could just expand it down to

1 April 9th.

2 Now, this version of the liquidity report
3 showing the negative liquidity shows a TMI Bates
4 stamp. Do you know what TMI is?

5 A. I do.

6 Q. I'll represent to you that it represents
7 Thornburg.

8 A. Oh, yeah.

9 Q. Thornburg Mortgage. If we could expand the
10 Bates stamp. Now, you talked about providing KPMG
11 liquidity reports at some point in a mass fashion?

12 A. Correct.

13 Q. And that was in connection with a
14 restatement document that said that was dated March
15 9th, I believe?

16 A. Okay.

17 Q. If we could look at Exhibit GE. Do you see
18 that Exhibit GE has a KPMG stamp on the bottom,
19 meaning it's produced by KPMG?

20 A. Um-hum.

21 Q. Do you see that this liquidity report dated
22 February 21, 2008, going all the way to the bottom,
23 neither shows the \$250 million in margin calls nor
24 shows any projected negative liquidity for any date
25 going forward?

1 A. I do see that. But again, that's because
2 the repo counterparties agreed to pause on the margin
3 calls because clearly the other liquidity report
4 meant we couldn't really go forward. So when Nate
5 called the repo counterparties and arranged that,
6 that's what's being reflected, and these reports are
7 kind of changed to reflect what's best known at that
8 particular time. So the 2/21, date at the end of the
9 day, that margin call was being paused, and so was
10 not being reflected in the report.

11 Q. Now, wait a minute. You're talking about
12 the repo counterparties holding off on margin calls?

13 A. Yes, or being negotiated with Nate. Yeah.

14 Q. Are you talking about the standstill
15 agreement where they agreed not to go into any more
16 margin calls?

17 A. It's more that they wanted to actually be
18 receiving the cash over a set period of time. So as
19 I kind of mentioned before, we don't always pay at
20 that particular day.

21 Q. Now, you're aware that that agreement with
22 the counterparties didn't occur until March 2008;
23 right?

24 MR. LEE: Your Honor, misstates the
25 evidence and the testimony. They're talking about

1 two different things.

2 THE COURT: Well, if you want to clear it
3 up, I'll give you a chance to recross. Overruled.

4 Q. (By Mr. Bliss) Okay. Just to clarify what
5 we're talking about here, on February 21, 2008, are
6 you saying that there was a formal agreement with
7 multiple counterparties to not provide additional
8 margin calls to Thornburg?

9 A. I'm not sure if there was a formal
10 agreement. I do know that Nate was discussing it
11 with the repo counterparties, such that we couldn't
12 pay those margin calls. So it was under discussion
13 to actually try to pay it over time.

14 Q. And that was with multiple counterparties?

15 A. I believe so.

16 Q. And was that after a default had occurred?

17 A. I don't know.

18 Q. And so if, in fact, that actually occurred
19 in March of 2008, then you're not really sure about
20 the sequence of events, when things happened relative
21 to these liquidity reports in either February or
22 March. Is that fair to say?

23 A. That's fair to say.

24 Q. You can't pinpoint the dates when you, for
25 instance, provided liquidity reports to KPMG, whether

1 it was February or March; right?

2 A. Correct.

3 Q. You don't have a clear memory of those
4 occurrences in either February or March 2008?

5 A. Correct.

6 Q. And the fact of the matter is, though, that
7 the exhibit that you have in front of you showing the
8 KPMG Bates stamp with a February 21 liquidity report
9 does not show any negative cash balance on it
10 whatsoever; correct?

11 A. Correct.

12 MR. BLISS: Thank you. Nothing further,
13 Your Honor.

14 THE COURT: All right. Mr. Ahn -- did you
15 want to have --

16 MR. LEE: Just briefly, Your Honor.

17 THE COURT: Go ahead, Mr. Lee.

18 RECROSS-EXAMINATION

19 BY MR. LEE:

20 Q. Mr. Ahn, I'd like to try to clear up what I
21 think may be a miscommunication. Was it your
22 understanding that in February of 2008, before the
23 Form 10-K was filed, there were occasions where
24 Thornburg received margin calls that it could not pay
25 in one day?

1 A. Correct.

2 Q. And was it your understanding that for
3 those margin calls that Thornburg could not pay in
4 one day, that Thornburg tried to work out
5 arrangements with the lenders in order to be able to
6 pay those over several days?

7 A. Correct.

8 Q. And is it your understanding that that is
9 different from any agreement that was later entered
10 into with a number of repo counterparties, a more
11 formal agreement?

12 A. Correct.

13 Q. And so when you were describing the
14 conversations that you understood Mr. Fellers was
15 having with the repo counterparties, what were you
16 referring to?

17 A. Again, the repo counterparties, they
18 themselves wanted the cash. So it's actually not in
19 their interest to completely wipe us out. So a lot
20 of that, what happens during that time is, if we
21 can't all pay it, we reach out and say, "Look, this
22 is the cash projection. You have to work with us and
23 take that margin call back, and we'll work some deal
24 out where you get it paid over a particular set
25 period of time."

1 So that is my understanding of what's
2 occurred during that time.

3 Q. Did you have an understanding that Mr.
4 Fellers was having those discussions with at least a
5 couple of repo counterparties in the February time
6 frame?

7 A. Yes.

8 MR. LEE: Nothing further, Your Honor.

9 THE COURT: Thank you, Mr. Lee.

10 Mr. Bliss, do you have any redirect?

11 MR. BLISS: No, Your Honor.

12 THE COURT: Mr. Ahn, you may step down.

13 Is there any reason that Mr. Ahn cannot be
14 excused from the proceedings, Mr. Bliss?

15 MR. BLISS: No, Your Honor.

16 THE COURT: Mr. Lee, can he be excused?

17 MR. LEE: Yes, Your Honor.

18 THE COURT: All right. You're excused from
19 the proceedings. Thank you for your testimony.

20 All right. Well, we're pretty close to the
21 end of the day, so why don't we call it a day and
22 pick up new witnesses or evidence in the morning?

23 Again, thank you for your hard work. Try
24 to do what you've been doing all along and be in the
25 jury room at 8:30. We'll try to be ready for you.

1 We're going to stay a little bit and talk a little
2 bit this evening. But my sense is that probably
3 we're on track, but I'm going to talk to the lawyers
4 a little bit tonight and make sure of that.

5 But again, thank you for your hard work,
6 and I appreciate the way you've been going about your
7 task. We'll see you in the jury room at 8:30 in the
8 morning. Y'all have a good evening.

9 All rise.

10 (The jury left the courtroom.)

11 THE COURT: All right. Everyone be seated.

12 All right. As far as the SEC, as far as
13 them being on their feet since openings, it has been
14 on their feet 19 hours and 37 minutes. And the
15 defendants have been on their feet since openings 22
16 hours and 39 minutes.

17 Mr. McKenna, where do you think we stand
18 this afternoon? Do you think we're on track?

19 MR. McKENNA: Yes, we have three witnesses
20 left: Ms. Starrett and the two defendants.

21 THE COURT: So you think we're in good
22 shape?

23 MR. McKENNA: Yes, sir.

24 THE COURT: How about you, Mr. Lee?

25 MR. LEE: Yes, Your Honor, I agree. I did

1 want to let the Court know of one witness-related
2 issue. We've already told the SEC that, but just so
3 it doesn't come as a surprise to the Court, we do
4 intend to call our clients in our case. So I
5 understand that the SEC is going to call them in
6 their case. Our cross-examination will be -- we'll
7 intend to keep within the scope of the direct. And
8 then we intend to call them in our case. And we told
9 the SEC that. But that won't have an effect on
10 timing. We will be well within our time estimate.

11 THE COURT: All right. I've gotten
12 comments back from the SEC and also some jury
13 instructions. When did y'all say you were going to
14 have yours to me?

15 MR. LEE: We will have a first set on at
16 least the -- we will have several additional proposed
17 jury instructions to the Court tonight. Then we will
18 have comments to the Court on the jury instructions
19 relating to the two primary claims, Rule 10b-5 and
20 Rule 13b2-2 tonight, and then the other charges that
21 came in the second wave of instructions we're working
22 through.

23 THE COURT: Okay. All right. Well, I
24 think I may hold up at least generating another draft
25 until I get yours. If I don't get the other set, I

1 may go ahead and generate another draft so you start
2 seeing what I'm thinking. But I'll wait to generate
3 a draft until I get those from the defendants.

4 Is there anything else we need to discuss
5 while we're together, Mr. McKenna?

6 MR. McKENNA: No, Your Honor.

7 THE COURT: Mr. Lee?

8 MR. LEE: Just one procedural question and
9 that is, we intend to make a Rule 50 motion at the
10 close of the evidence. We think we have a strong
11 basis for a Rule 50 motion on some, if not all, of
12 the claims and we want to find out the Court's
13 preference and approach to how we do that, whether we
14 argue it orally or submit a brief, and so on.

15 THE COURT: It's up to you. I'll take
16 whatever you want to do. If you want to make it
17 orally, that's fine. If you want to submit
18 something, that's fine. So I'll leave that to you.
19 However you want to make it.

20 Anything else?

21 MR. LEE: No, Your Honor.

22 THE COURT: All right. Well, y'all have a
23 good evening. I appreciate your hard work. See
24 y'all tomorrow at 8:30.

25 (The Court stood in recess.)


C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on June 6, 2016.


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